

**Pages 1 to / à 7**  
**are withheld pursuant to sections**  
**sont retenues en vertu des articles**

**21(1)(b), 20(1)(c), 23, 21(1)(a)**

**of the Access to Information Act**  
**de la Loi sur l'accès à l'information**

s.21(1)(a)

s.21(1)(b)

s.23

**Nicole, Jean-Francois**

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**From:** LeBlanc, Alethea  
**Sent:** Friday, August 14, 2015 6:20 PM  
**To:** 'Eric Guimond'; Saranchuk, Andrew (AADNC-AANDC); Simms, Duaine (AADNC-AANDC)  
**Cc:** Karen Cuddy; Véronique Rozon; Schafer, Wayne; Christiansen, Jocelyn  
**Subject:** RE: CCEPIRSS - Notice of Appeal and Negotiation of Court Order and Release - Instructions

Good Friday evening in Ottawa,

Alethea LeBlanc  
Counsel/Avocate-conseil  
Justice Canada | Ministère de la Justice Canada  
780-495-8796

---

**From:** Eric Guimond [mailto:Eric.Guimond@aandc-aadnc.gc.ca]  
**Sent:** August-14-15 9:53 AM  
**To:** Saranchuk, Andrew (AADNC-AANDC); Simms, Duaine (AADNC-AANDC)  
**Cc:** LeBlanc, Alethea; Karen Cuddy; Véronique Rozon; Schafer, Wayne  
**Subject:** Re: CCEPIRSS - Notice of Appeal and Negotiation of Court Order and Release - Instructions

Duaine,

Thanks again for your support

Eric

>>> Duaine Simms 8/13/2015 5:16 PM >>>

Andrew:

Thanks.

Duaine

Duaine W. Simms

Avocat général et directeur par intérim / A/General Counsel and Director

Ministère de la Justice Canada / Department of Justice Canada

Services juridiques d'AADNC / AANDC Legal Services

Questions des enfants autochtones / Aboriginal Children's Issues

10, rue Wellington, 13e étage / 10 Wellington Street, 13th floor

Gatineau (Québec) K1A 0H4

Téléphone / Telephone : (819) 934-9118

Courriel / E-mail: [Duaine.Simms@aadnc-aandc.gc.ca](mailto:Duaine.Simms@aadnc-aandc.gc.ca)

Gouvernement du Canada / Government of Canada

Vous pouvez me répondre dans la langue officielle de votre choix. | You can reply in the official language of your choice.

*Pensez aux arbres avant de m'imprimer s'il vous plaît ~ Think of the trees before printing me please*

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**Nicole, Jean-Francois**

---

**From:** LeBlanc, Alethea  
**Sent:** Wednesday, September 9, 2015 1:05 PM  
**To:** Schafer, Wayne; Saranchuk, Andrew (AADNC-AANDC); Nancy Joyes  
**Cc:** Lafontaine, Alain (AANDC-AADNC); 'Eric.Guimond@aandc-aadnc.gc.ca';  
'Veronique.Rozon@aandc-aadnc.gc.ca'; McCurry, Pam; Christiansen, Jocelyn; Pazder,  
Sherri; Simms, Duaine (AADNC-AANDC); Manon Paquet; 'Melinda.Sellers@aandc-  
aadnc.gc.ca'  
**Subject:** RE: CCEPIRSS Procedural decision of the SKCA

Good afternoon,

Thanks,

Alethea LeBlanc  
Counsel/Avocate-conseil  
Justice Canada | Ministère de la Justice Canada  
780-495-8796

---

**From:** Schafer, Wayne  
**Sent:** September-07-15 5:14 PM  
**To:** Saranchuk, Andrew (AADNC-AANDC); Simms, Duaine (AADNC-AANDC)  
**Cc:** Lafontaine, Alain (AANDC-AADNC); 'Eric.Guimond@aandc-aadnc.gc.ca'; 'Veronique.Rozon@aandc-aadnc.gc.ca';  
McCurry, Pam  
**Subject:** Re: Fwd: RE: Fw: CEPPIRRS Brief

Thanks Andrew

Thanks

Wayne Malcolm Schafer, QC

---

**From:** Andrew Saranchuk [<mailto:Andrew.Saranchuk@aadnc-aandc.gc.ca>]  
**Sent:** Monday, September 07, 2015 06:01 PM  
**To:** Simms, Duaine (AADNC-AANDC); Schafer, Wayne  
**Cc:** Lafontaine, Alain (AANDC-AADNC); Eric Guimond <[Eric.Guimond@aadnc-aandc.gc.ca](mailto:Eric.Guimond@aadnc-aandc.gc.ca)>; Véronique Rozon <[Veronique.Rozon@aadnc-aandc.gc.ca](mailto:Veronique.Rozon@aadnc-aandc.gc.ca)>; McCurry, Pam  
**Subject:** Re: Fwd: RE: Fw: CEPPIRRS Brief

>>> "Schafer, Wayne" <[Wayne.Schafer@JUSTICE.GC.CA](mailto:Wayne.Schafer@JUSTICE.GC.CA)> 9/7/2015 4:07:49 PM >>>  
Good afternoon

Thank you

Wayne Malcolm Schafer Q.C.

---

**From:** Duaine Simms [<mailto:Duaine.Simms@aadnc-aandc.gc.ca>]  
**Sent:** Friday, September 04, 2015 07:24 PM  
**To:** Saranchuk, Andrew (AADNC-AANDC)  
**Cc:** Lafontaine, Alain (AANDC-AADNC); Eric Guimond <[Eric.Guimond@aadnc-aandc.gc.ca](mailto:Eric.Guimond@aadnc-aandc.gc.ca)>; McCurry, Pam; Schafer, Wayne  
**Subject:** Fwd: RE: Fw: CEPPIRRS Brief

Andrew:

[Redacted]

Duaine

>>>

**From:** Andrew Saranchuk  
**To:** Duaine Simms  
**CC:** Eric Guimond; Pam McCurry; Wayne Schafer  
**Date:** 04/09/2015 19:10  
**Subject:** Fwd: RE: Fw: CEPPIRRS Brief

File what? A proposed brief on what?

[Redacted]

>>> On 9/4/2015 at 6:08 PM, in message <55EA1661.301 : 24 : 32954>, Duaine Simms wrote:  
Andrew:

[Redacted]

Duaine

>>>

**From:** Duaine Simms  
**To:** Eric Guimond; Manon Paquet; Melinda Sellers; Wayne Schafer  
**CC:** Alethea LeBlanc; Allan Mason; Jocelyn Christiansen  
**Date:** 04/09/2015 17:34  
**Subject:** RE: Fw: CEPPIRRS Brief

Eric:

[Redacted]

Duaine

>>>

**From:** "Schafer, Wayne" <Wayne.Schafer@JUSTICE.GC.CA>  
**To:** 'Eric Guimond' <Eric.Guimond@aadnc-aadnc.gc.ca>, "Simms, Duaine(AADNC-AANDC)" <Duaine.Simms@aadnc-aadnc.gc.ca>, Manon Paquet <Manon.Paquet@aadnc-aadnc.gc.ca>, Melinda Sellers <Melinda.Sellers@aadnc-aadnc.gc.ca>  
**CC:** "LeBlanc, Alethea" <Alethea.LeBlanc@justice.gc.ca>, "Mason, Allan" <Allan.Mason@justice.gc.ca>, "Christiansen, Jocelyn" <Jocelyn.Christiansen@justice.gc.ca>  
**Date:** 04/09/2015 17:30  
**Subject:** RE: Fw: CEPPIRRS Brief

Good afternoon Eric;

Regards

Wayne

**Wayne Malcolm Schafer, Q.C.**

Senior Counsel - IRS Team Leader / Avocat principal - Chef d'équipe  
Aboriginal Law Services / Services du droit autochtone  
Prairie Region / Region des Prairies  
Department of Justice Canada / Ministère de la Justice Canada  
EPCOR Tower  
300, 10423 - 101st Street / 300, 10423 - rue 101  
Edmonton, Alberta T5H 0E7 / Edmonton (Alberta) T5H 0E7  
[wayne.schafer@justice.gc.ca](mailto:wayne.schafer@justice.gc.ca)  
Telephone / Téléphone 780-495-7232  
Facsimile / Télécopieur 780-495-2964  
Government of Canada / Gouvernement du Canada

s.21(1)(a)

s.21(1)(b)

s.23

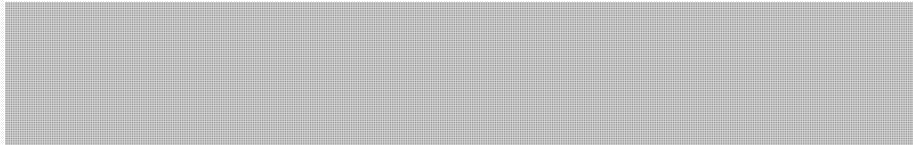
**From:** Eric Guimond [<mailto:Eric.Guimond@aandc-aadnc.gc.ca>]

**Sent:** Friday, September 04, 2015 3:23 PM

**To:** Simms, Duaine (AADNC-AANDC); Manon Paquet; Melinda Sellers; Schafer, Wayne

**Subject:** Re: Fw: CEPPIRRS Brief

Bonsoir Wayne,



Be well

Eric

>>> Melinda Sellers <[Melinda.sellers@aandc-aadnc.gc.ca](mailto:Melinda.sellers@aandc-aadnc.gc.ca)> 9/4/2015 4:56 PM >>>

Sent from my BlackBerry 10 smartphone on the Rogers network.

**From:** Schafer, Wayne <[Wayne.Schafer@JUSTICE.GC.CA](mailto:Wayne.Schafer@JUSTICE.GC.CA)>

**Sent:** Friday, September 4, 2015 4:52 PM

**To:** Duaine Simms; Melinda Sellers

**Subject:** CEPPIRRS Brief

Hi



Wayne

**Wayne Malcolm Schafer, Q.C.**

Senior Counsel - IRS Team Leader / Avocat principal - Chef d'équipe

Aboriginal Law Services / Services du droit autochtone

Prairie Region / Region des Prairies

Department of Justice Canada / Ministère de la Justice Canada

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Government of Canada / Gouvernement du Canada

\*\*\*\*\*

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COURT FILE            816 of 2005  
NUMBER

COURT OF QUEEN'S BENCH OF SASKATCHEWAN

JUDICIAL CENTRE    REGINA

PLAINTIFF(S)        FONTAINE, ET AL

DEFENDANT(S)       A.G. OF CANADA, ET AL



### **GENERAL FINAL RELEASE**

WHEREAS the Indian Residential Schools Settlement Agreement ("IRSSA") was entered into on May 8, 2006, and was approved by nine Courts of Superior Jurisdiction across Canada, including the Saskatchewan Court of Queen's Bench, on December 15, 2006;

AND WHEREAS attached to the IRSSA is Schedule "O-3" being a Settlement Agreement between Her Majesty the Queen in Right of Canada as represented by the Minister Responsible for the Office of Indian Residential Schools Resolution of Canada ("Canada") and the Catholic Entities named in Schedule A to the Settlement Agreement and attached to this General Final Release (the "Catholic Entities") and the Corporation of Catholic Entities Party to the Indian Residential Schools Settlement ("CCEPIRSS");

AND WHEREAS Schedule "O-3" of the Settlement Agreement required the Catholic Entities and CCEPIRSS to meet three specific financial obligations, namely to:

1. make a \$29 million cash contribution;
2. contribute \$25 million In-Kind Services to support healing and reconciliation programs; and
3. pursue a \$25 million Canada-wide best-efforts fundraising campaign (later identified as Moving Forward Together) to support healing and reconciliation programs;

(collectively referred to as "Specific Financial Obligations");

AND WHEREAS, in a ruling on the Request for Directions of the Catholic Entities and CCEPIRSS, dated November 18, 2014, the Honourable Mr. Justice Gabrielson of the Saskatchewan Court of Queen's Bench, on July 16, 2015, found in favour of the Catholic Entities and CCEPIRSS (the "Judicial Ruling");

AND WHEREAS Canada and the Catholic Entities and CCEPIRSS have agreed that the only issue before Justice Gabrielson, in the November 18, 2014 Request for Directions, was whether or not there had been a settlement of the Specific Financial Obligations;

AND WHEREAS Canada and the Catholic Entities and CCEPIRSS have agreed that paragraphs 5 and 45 of the Judicial Ruling are understood to be limited to the matters before Justice Gabrielson, namely the Specific Financial Obligations;

AND WHEREAS, Canada has filed a Notice of Appeal in the Saskatchewan Court of Appeal in relation to the Judicial Ruling, and the appeal is scheduled to be heard in due course as per the schedule and direction of the Court;

AND WHEREAS, in advance of the appeal of the Judicial Ruling, Canada and the Catholic Entities and CCEPIRSS have agreed to settle all of the Specific Financial Obligations, as specified and defined above, on the basis that CCEPIRSS will pay at Canada's direction the sum of \$1.2 million to the Legacy of Hope Foundation;

AND WHEREAS the Catholic Entities and CCEPIRSS are entitled to the benefits of sections 4.5 and 4.6 of the Settlement Agreement as those sections are currently worded in the Settlement Agreement;

NOW THEREFORE, Canada, for good and valuable consideration, the sufficiency of which is hereby irrevocably acknowledged, does hereby remise, release and forever discharge the Catholic Entities (and Missionaires du Christ roi and Les Soeurs Missionaires du Christ (B.C.)) and CCEPIRSS, its directors, officers, shareholders, agents, lawyers and employees (hereinafter jointly and severally called the "Releasees"), of and from all manner of actions, causes of action, suits, debts, dues, accounts, bonds, whatsoever against the Releasees which Canada ever had, now has or hereafter can, shall or may have, or by reason of any cause, matter or thing whatsoever existing up to date hereof arising out of, or relating to, the Specific Financial Obligations;

AND CANADA further covenants and agrees not directly or indirectly, to join, assist, aid or act in concert in any manner whatsoever with any person or entity in making any financial claim or demand whatsoever against the Releasees arising out of or in relation to the aforesaid Specific Financial Obligations hereinbefore remised, released and forever discharged;

AND IN LIGHT OF THE SETTLEMENT of the Specific Financial Obligations, Canada agrees to pay the taxable costs of the Catholic Entities and CCEPIRSS' RFD application of November 18, 2014 and to abandon its appeal of the Judicial Ruling and the Catholic Entities and CCEPIRSS agree to waive any costs in relation to the appeal to which they might otherwise be entitled;



IN WITNESS WHEREOF Canada has executed this Release as of the \_\_\_\_\_  
day of \_\_\_\_\_, 2015 under the hand of its duly authorized officer in that  
behalf.

\_\_\_\_\_  
Colleen Swords  
Deputy Minister  
Aboriginal Affairs and Northern Development Canada

## **SCHEDULE A**

### **LIST OF THE CATHOLIC ENTITIES**

1. Sisters of Charity, a body corporate also known as Sisters of Charity of St. Vincent de Paul, Halifax also known as Sisters of Charity of Halifax
2. The Roman Catholic Episcopal Corporation of Halifax
3. Les Soeurs De Notre Dame-Auxiliatrice
4. Les Soeurs de St. Francois D'Assise
5. Insitut Des Soeurs Du Bon Conseil
6. Les Soeurs de Saint Joseph de Saint-Hyacinthe  
(The Sisters of St. Joseph of St. Hyacinthe)
7. Les Soeurs de Jesus-Marie
8. Les Soeurs de L 'Assomption de la Sainte Verge
9. Les Soeurs de L'Assomption de la Saint Vierge de l'Alberta
10. Les Soeurs de la Charité de St.-Hyacinthe
11. Les Oeuvres Oblates de l'Ontario
12. Les Résidence Oblates du Québec
13. La Corporation Episcopale Catholique Romaine de la Baie James  
(The Roman Catholic Episcopal Corporation of James Bay)  
The Catholic Diocese of Moosonee
14. Soeurs Grises de Montréal/Grey Nuns of Montreal
15. Sisters of Charity (Grey Nuns) of Alberta
16. Les Soeurs de La Charité des T.N.O. Grey Nun's Regional Centre
17. Hôtel-Dieu de Nicolet (HDN)
18. The Grey Nuns of Manitoba Inc. Les Soeurs Grises du Manitoba Inc.
19. La Corporation Episcopale Catholique Romaine de la Baie d'Hudson  
The Roman Catholic Episcopal Corporation of Hudson's Bay

20. Missionary Oblates – Grandin
21. Les Oblats de Marie Immaculée du Manitoba
22. The Archiepiscopal Corporation of Regina
23. The Sisters of the Presentation
24. The Sisters of St. Joseph of Sault St. Marie
25. Les Soeurs de la Charité d'Ottawa – Sisters of Charity of Ottawa
26. Oblates of Mary Immaculate – St. Peter's Province
27. The Sisters of Saint Ann
28. Sisters of Instruction of the Child Jesus
29. The Benedictine Sisters of Mt. Angel Oregon
30. Les Peres Montfortains
31. The Roman Catholic Bishop of Kamloops Corporation Sole
32. The Bishop of Victoria, Corporation Sole
33. The Roman Catholic Bishop of Nelson Corporation Sole
34. Order of the Oblates of Mary Immaculate in the Province of British Columbia
35. The Sisters of Charity of Providence of Western Canada
36. La Corporation Episcopale Catholique Romaine de Grouard
37. Roman Catholic Episcopal Corporation of Keewatin
38. La Corporation Archiépiscope Catholique Romaine de St. Boniface
39. Les Missionnaires Oblates de St. Boniface  
The Missionary Oblate Sisters of St. Boniface
40. Roman Catholic Archiepiscopal Corporation of Winnipeg
41. La Corporation Episcopale Catholique Romaine De Prince Albert
42. The Roman Catholic Bishop of Thunder Bay

43. Immaculate Heart Community of Los Angeles CA
44. Archdiocese of Vancouver  
The Roman Catholic Archbishop of Vancouver
45. Roman Catholic Diocese of Whitehorse  
The Catholic Episcopal Corporation of Whitehorse
46. The Roman Catholic Episcopal Corporation of Mackenzie
47. The Roman Catholic Episcopal Corporation of Prince Rupert
48. OMI Lacombe Canada Inc.
49. Episcopal Corporation of Saskatoon
50. Soeurs Missionnaires du Christ-Roy / Sisters of Christ the King

PROTECTED B – RIA5679

**LITIGATION RELATED TO THE CORPORATION OF CATHOLIC ENTITIES PARTY  
TO THE INDIAN RESIDENTIAL SCHOOLS SETTLEMENT**

Box Information for the Deputy Minister

**DATE:** October 30, 2015**SUMMARY**

- On July 16, 2015, the Court of Queen's Bench of Saskatchewan delivered its ruling on a Request for Direction filed in December 2013, by the Corporation of Catholic Entities Party to the Residential Schools Settlement (Corporation). The court ruled in favour of the corporation, with costs. The court found that an enforceable settlement had been reached between the parties for \$1.2 million from the corporation.

- 

(RIA5570).

- 

(RIA5598).

- As of October 28, 2015, the corporation has agreed upon the General Final Release and the attached Schedule "A" containing a revised list of the Catholic entities (Annex A).

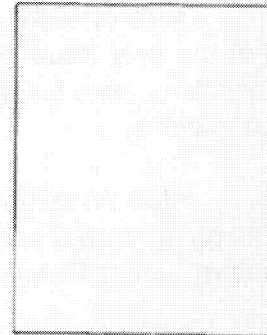
- 

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Annex A: General Final Release with Schedule "A" for Signature

**ANNEX A**

COURT FILE NUMBER 816 of 2005  
COURT OF QUEEN'S BENCH OF SASKATCHEWAN  
JUDICIAL CENTRE REGINA  
PLAINTIFF(S) FONTAINE, ET AL  
DEFENDANT(S) A.G. OF CANADA, ET AL



**GENERAL FINAL RELEASE**

WHEREAS the Indian Residential Schools Settlement Agreement ("IRSSA") was entered into on May 8, 2006, and was approved by nine Courts of Superior Jurisdiction across Canada, including the Saskatchewan Court of Queen's Bench, on December 15, 2006;

AND WHEREAS attached to the IRSSA is Schedule "O-3" being a Settlement Agreement between Her Majesty the Queen in Right of Canada as represented by the Minister Responsible for the Office of Indian Residential Schools Resolution of Canada ("Canada") and the Catholic Entities named in Schedule A to the Settlement Agreement and attached to this General Final Release (the "Catholic Entities") and the Corporation of Catholic Entities Party to the Indian Residential Schools Settlement ("CCEPIRSS");

AND WHEREAS Schedule "O-3" of the Settlement Agreement required the Catholic Entities and CCEPIRSS to meet three specific financial obligations, namely to:

1. make a \$29 million cash contribution;
2. contribute \$25 million In-Kind Services to support healing and reconciliation programs; and
3. pursue a \$25 million Canada-wide best-efforts fundraising campaign (later identified as Moving Forward Together) to support healing and reconciliation programs;

(collectively referred to as "Specific Financial Obligations");

AND WHEREAS, in a ruling on the Request for Directions of the Catholic Entities and CCEPIRSS, dated November 18, 2014, the Honourable Mr. Justice Gabrielson of the Saskatchewan Court of Queen's Bench, on July 16, 2015, found in favour of the Catholic Entities and CCEPIRSS (the "Judicial Ruling");

AND WHEREAS Canada and the Catholic Entities and CCEPIRSS have agreed that the only issue before Justice Gabrielson, in the November 18, 2014 Request for Directions, was whether or not there had been a settlement of the Specific Financial Obligations;

AND WHEREAS Canada and the Catholic Entities and CCEPIRSS have agreed that paragraphs 5 and 45 of the Judicial Ruling are understood to be limited to the matters before Justice Gabrielson, namely the Specific Financial Obligations;

AND WHEREAS, Canada has filed a Notice of Appeal in the Saskatchewan Court of Appeal in relation to the Judicial Ruling, and the appeal is scheduled to be heard in due course as per the schedule and direction of the Court;

AND WHEREAS, in advance of the appeal of the Judicial Ruling, Canada and the Catholic Entities and CCEPIRSS have agreed to settle all of the Specific Financial Obligations, as specified and defined above, on the basis that CCEPIRSS will pay at Canada's direction the sum of \$1.2 million to the Legacy of Hope Foundation;


AND WHEREAS the Catholic Entities and CCEPIRSS are entitled to the benefits of sections 4.5 and 4.6 of the Settlement Agreement as those sections are currently worded in the Settlement Agreement;

NOW THEREFORE, Canada, for good and valuable consideration, the sufficiency of which is hereby irrevocably acknowledged, does hereby remise, release and forever discharge the Catholic Entities (and Missionaires du Christ roi and Les Soeurs Missionaires du Christ (B.C.)) and CCEPIRSS, its directors, officers, shareholders, agents, lawyers and employees (hereinafter jointly and severally called the "Releasees"), of and from all manner of actions, causes of action, suits, debts, dues, accounts, bonds, whatsoever against the Releasees which Canada ever had, now has or hereafter can, shall or may have, or by reason of any cause, matter or thing whatsoever existing up to date hereof arising out of, or relating to, the Specific Financial Obligations;

AND CANADA further covenants and agrees not directly or indirectly, to join, assist, aid or act in concert in any manner whatsoever with any person or entity in making any financial claim or demand whatsoever against the Releasees arising out of or in relation to the aforesaid Specific Financial Obligations hereinbefore remised, released and forever discharged;

AND IN LIGHT OF THE SETTLEMENT of the Specific Financial Obligations, Canada agrees to pay the taxable costs of the Catholic Entities and CCEPIRSS' RFD application of November 18, 2014 and to abandon its appeal of the Judicial Ruling and the Catholic Entities and CCEPIRSS agree to waive any costs in relation to the appeal to which they might otherwise be entitled;

IN WITNESS WHEREOF Canada has executed this Release as of the 30th  
day of October, 2015 under the hand of its duly authorized officer in that  
behalf.

  
\_\_\_\_\_  
Colleen Swords  
Deputy Minister  
Aboriginal Affairs and Northern Development Canada



## **SCHEDULE A**

### **LIST OF THE CATHOLIC ENTITIES**

1. Sisters of Charity, a body corporate also known as Sisters of Charity of St. Vincent de Paul, Halifax also known as Sisters of Charity of Halifax
2. The Roman Catholic Episcopal Corporation of Halifax
3. Les Soeurs De Notre Dame-Auxiliatrice
4. Les Soeurs de St. Francois D'Assise
5. Insitut Des Soeurs Du Bon Conseil
6. Les Soeurs de Saint Joseph de Saint-Hyacinthe  
(The Sisters of St. Joseph of St. Hyacinthe)
7. Les Soeurs de Jesus-Marie
8. Les Soeurs de L 'Assomption de la Sainte Verge
9. Les Soeurs de L'Assomption de la Saint Vierge de l'Alberta
10. Les Soeurs de la Charité de St.-Hyacinthe
11. Les Oeuvres Oblates de l'Ontario
12. Les Résidence Oblates du Québec
13. La Corporation Episcopale Catholique Romaine de la Baie James  
(The Roman Catholic Episcopal Corporation of James Bay)  
The Catholic Diocese of Moosonee
14. Soeurs Grises de Montréal/Grey Nuns of Montreal
15. Sisters of Charity (Grey Nuns) of Alberta
16. Les Soeurs de La Charité des T.N.O. Grey Nun's Regional Centre
17. Hôtel-Dieu de Nicolet (HDN)
18. The Grey Nuns of Manitoba Inc. Les Soeurs Grises du Manitoba Inc.
19. La Corporation Episcopale Catholique Romaine de la Baie d'Hudson  
The Roman Catholic Episcopal Corporation of Hudson's Bay

20. Missionary Oblates – Grandin
21. Les Oblats de Marie Immaculée du Manitoba
22. The Archiepiscopal Corporation of Regina
23. The Sisters of the Presentation
24. The Sisters of St. Joseph of Sault St. Marie
25. Les Soeurs de la Charité d'Ottawa – Sisters of Charity of Ottawa
26. Oblates of Mary Immaculate – St. Peter's Province
27. The Sisters of Saint Ann
28. Sisters of Instruction of the Child Jesus
29. The Benedictine Sisters of Mt. Angel Oregon
30. Les Peres Montfortains
31. The Roman Catholic Bishop of Kamloops Corporation Sole
32. The Bishop of Victoria, Corporation Sole
33. The Roman Catholic Bishop of Nelson Corporation Sole
34. Order of the Oblates of Mary Immaculate in the Province of British Columbia
35. The Sisters of Charity of Providence of Western Canada
36. La Corporation Episcopale Catholique Romaine de Grouard
37. Roman Catholic Episcopal Corporation of Keewatin
38. La Corporation Archiépiscope Catholique Romaine de St. Boniface
39. Les Missionnaires Oblates de St. Boniface  
The Missionary Oblate Sisters of St. Boniface
40. Roman Catholic Archiepiscopal Corporation of Winnipeg
41. La Corporation Episcopale Catholique Romaine De Prince Albert
42. The Roman Catholic Bishop of Thunder Bay

43. Immaculate Heart Community of Los Angeles CA
44. Archdiocese of Vancouver  
The Roman Catholic Archbishop of Vancouver
45. Roman Catholic Diocese of Whitehorse  
The Catholic Episcopal Corporation of Whitehorse
46. The Roman Catholic Episcopal Corporation of Mackenzie
47. The Roman Catholic Episcopal Corporation of Prince Rupert
48. OMI Lacombe Canada Inc.
49. Episcopal Corporation of Saskatoon
50. Soeurs Missionnaires du Christ-Roy / Sisters of Christ the King

UNCLASSIFIED - T147

  
Dear 

I am writing in response to your letter of November 4, 2015, addressed to the Honourable Dr. Carolyn Bennett, Minister of Indigenous and Northern Affairs.

In your letter, you requested information about the fulfillment of Catholic financial obligations under the Indian Residential Schools Settlement Agreement, including whether these obligations were the subject of litigation between the Government of Canada and the Corporation of Catholic Entities Party to the Indian Residential Schools Settlement (the Corporation).

I can confirm that, in December 2013, the Government of Canada filed a Request for Direction with the Court of Queen's Bench for Saskatchewan with respect to matters related to the Corporation's financial obligations under the Settlement Agreement. In particular, Canada asserted that the Corporation was not entitled to claim legal fees as reasonable administrative costs and sought \$1.6 million to be reimbursed to the Aboriginal Healing Foundation.

Although Canada and the Corporation originally entered into negotiations to resolve this matter, in the end, court direction was required on various aspects of the Corporation's financial obligations under the Settlement Agreement. On July 16, 2015, the Court determined that Canada and the Corporation had reached a binding agreement, such that, in exchange for reimbursement of \$1.2 million of claimed administrative costs, Canada would release the Corporation from its financial obligations under the Settlement Agreement. Accordingly, the Corporation has until January 15, 2016, to issue a payment of \$1.2 million to the Legacy of Hope Foundation, the successor entity to the Aboriginal Healing Foundation.

You have also requested information about one specific component of the Catholic Entities' financial obligations under the Settlement Agreement, which is the Entities' commitment to undertake a seven year, Canada-wide fundraising campaign. The Settlement Agreement stipulated that the Catholic Entities had to make "best efforts" to reach \$25 million. The seven-year period for this campaign concluded October 19, 2014. The Government of Canada has recently requested a report from the Corporation on its fundraising activities, but has not yet received a response.

I realize that a referral may not be ideal given past correspondence, but on this aspect, the Corporation does remain your best source of information. I invite you to contact the Corporation directly if you have any further questions about its fundraising campaign and other activities they have undertaken or might contemplate. The Corporation can be contacted via

The Most Reverend Gérard Pettipas,  
Archbishop and Chair of the Board of Directors,  
Corporation of Catholic Entities Party to the  
Residential Schools Settlement  
109 Wright Street  
GATINEAU, QC J8X 2G7

I would like to take this opportunity to thank you for your interest in this important work. I can assure you that the Government of Canada is committed to a fair and lasting resolution to the legacy of Indian Residential Schools and recognizes that bringing closure to the legacy lies at the heart of reconciliation and a renewal of the relationships between Indigenous people who attended these schools, their families and communities, and all Canadians.

Yours sincerely,

Andrew Saranchuk  
Assistant Deputy Minister  
Resolution and Individual Affairs Sector  
Indigenous and Northern Affairs Canada

c.c.: The Hon. Dr. Hedy Fry, MP PC  
c.c.: The Most Reverend Gérard Pettipas

**Pages 32 to / à 33  
are withheld pursuant to sections  
sont retenues en vertu des articles**

**21(1)(b), 19(1), 21(1)(a), 23**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

CHRONOLOGY OF LITIGATION re. CATHOLIC ENTITIES PARTY TO THE INDIAN RESIDENTIAL SCHOOLS SETTLEMENT (CCEPIRSS)	
April 2006	CCEPIRSS was incorporated to co-ordinate the implementation execution of Catholic financial obligations under Indian Residential Schools Settlement Agreement. (IRSSA)
October 17, 2011	CCEPIRSS sought to reduce Net Amount of cash contribution to Aboriginal Healing Foundation (AHF) from \$20.6M to \$18.6M, claiming \$2M in administrative costs, including legal fees.
<b>December 24, 2013</b>	Canada filed a Request for Direction regarding the validity of the deductions.  Annex B - Canada's RFD Canada's RFD December 24 2013
<b>May 24, 2014</b>	[REDACTED] (RIA4669) Document not located  Decision Note not located (Annexes C-H for the note located) <ul style="list-style-type: none"> <li>- Document not located: Annex A</li> <li>- Document not located: Annex B</li> <li>- Annex C – Canada's Factum</li> <li>- Annex D – Mediation Brief</li> <li>- Annex F – Letter from AFN</li> <li>- Annex G – Letter from CCEPIRSS Counsel to DOJ</li> <li>- Annex H – Globe and Mail article</li> </ul>
May 29-30, 2014	[REDACTED]
June 26, 2014	[REDACTED]
<b>August 11, 2014</b>	[REDACTED]
September 17, 2014	Negotiations result in agreement to settle for \$1.2M.
October 2014	Disagreement regarding scope of release: CCEPIRSS assert a full and final release of all financial obligations, including fundraising activities, was agreed to orally and via email. [REDACTED]
<b>November 7, 2014</b>	[REDACTED]  Annex I, includes: Decision note – Signed by the Minister (with annexes) <ul style="list-style-type: none"> <li>- Annex A - [REDACTED]</li> <li>- Annex B – Letter from Catholic Entities counsel to Justice counsel, October 29, 2014</li> </ul>
<b>November 18, 2014</b>	CCEPIRSS filed Request for Direction seeking order that all matters between parties had been agreed including a broad, full and final release of all financial obligations. <u>Annex J – Catholic Entities RFD</u>
June 3, 2015	Hearing takes place in Regina, SK, decision reserved.
July 16, 2015	Decision released: a contract had been formed, and Canada agreed to a full and final release during negotiations. In the decision it is unclear if “full and final” is limited to financial obligations or extends to approximately 20 non-financial obligations from CCEPIRSS. <u>Annex K: Queen's Bench for Saskatchewan, July 16, 2015</u>
July 31, 2015	[REDACTED]  Annex L: [REDACTED]
<b>August 13, 2015</b>	[REDACTED] (RIA5570)

<p><b>s.21(1)(a)</b></p> <p><b>s.23</b></p>	<p><b>Documents:</b></p> <p><b>Annex M:</b> Decision Note – Signed by the Deputy Minister (without annexes)</p> <p>The following annexes to the Decision Note above (Annex G) are attached separately:</p> <p><b>Annex K:</b> Annex A – Queen’s Bench for Saskatchewan, July 16, 2015</p> <p><b>Annex L:</b> Annex B – [REDACTED]</p> <p><b>Annex N:</b> Annex C – Schedule O – IRS Settlement Agreement</p> <p><b>Annex B:</b> Annex D – Canada’s RFD December 24, 2013</p> <ul style="list-style-type: none"> <li>- <b>Annex J:</b> Annex E – Catholic Entities RFD, November 18, 2014</li> <li>- <b>Not Annexed:</b> Annex F – RIA4770 (document not located)</li> <li>- <b>Annex I:</b> Annex G – Decision note – Signed by the Minister (with annexes) <ul style="list-style-type: none"> <li>- Annex A – [REDACTED]</li> <li>- Annex B – Letter from Catholic Entities counsel to Justice counsel, October 29, 2014</li> </ul> </li> </ul>
<p><b>September 4, 2015</b></p>	<p>[REDACTED]</p> <p><b>Annex O – Decision Note – Signed by the Minister (with annexes in one PDF)</b></p> <ul style="list-style-type: none"> <li>- Annex A – RIA4770 (document not located)</li> <li>- Annex B – Letter from Catholic Entities counsel to Justice counsel</li> <li>- Annex C – Queen’s Bench for Saskatchewan, July 16, 2015</li> <li>- Annex D – [REDACTED]</li> <li>- Annex E – [REDACTED]</li> </ul>
<p><b>September 30, 2015</b></p>	<p>Assistant Deputy Minister, RIA agrees to share a draft release with CCEPIRSS. Terms of the draft release are based on ministerial instructions of September 4, 2015. <b>(RIA5632)</b></p> <p><b>Annex P: Draft Decision Note to the ADM</b></p> <ul style="list-style-type: none"> <li>- <b>Annex Q:</b> Annex A – Draft general final release CCEPIRSS RFD</li> </ul>
<p><b>October 30, 2015</b></p>	<p>Deputy Minister signs release providing CCEPIRSS a full and final release of all financial obligations upon payment of \$1.2M to Legacy of Hope foundation. <b>(RIA5679)</b></p> <p><b>Annex R: Box Info Note</b></p> <ul style="list-style-type: none"> <li>- <b>Annex S:</b> Annex A – 2015-10- 30 - Signed General Release</li> </ul>
<p><b>November 4, 2015</b></p>	<p>Minister Bennett receives correspondence from [REDACTED] requesting information on the fulfillment of Catholic obligations under IRSSA.</p>
<p><b>December 17, 2015</b></p>	<p>Response from Assistant Deputy Minister Andrew Saranchuk which outlined the litigation, the court decision and provided contact information for CCEPIRSS.</p>
<p><b>December 29, 2015</b></p>	<p>Minister Bennett received a follow-up letter from [REDACTED] via email, asking about evaluation of “best efforts” by Catholics in their fundraising campaign.</p>
<p><b>January 15, 2016</b></p>	<p>Canada receives confirmation that Legacy of Hope received \$1.2M from CCEPIRSS.</p>
<p><b>March 19, 2016</b></p>	<p>Response from Assistant Deputy Minister Andrew Saranchuk to [REDACTED] follow-up questions.</p>



**APPROBATION DE DOCUMENTS  
DOCUMENT APPROVALS**

<b>DOCUMENT:</b>		<b>Annexes:</b>	
WebCIMS RIA5570	N° du SGGID - CIDM No. DN: 7647785	A #7639159, B#7706356, C #7707264, D #7706530, E #7706692 Annex F - RIA4770 - Secret, Annex G - RIA5003 #7056663	
<b>Objet - Subject</b> The Corporation of Catholic Entities Party to the Residential Schools Settlement			
<b>Produit - Product</b> Note de décision - Decision Note		<b>À l'intention de - Addressed To</b> Sous-ministre adjoint(e) - Assistant Deputy Minister	
<b>Auteur - Originator</b> Ronald Schmalz		<b>Numéro de téléphone - Telephone Number</b> (819) 994-8536	

**Échéancier - Timing:** ☐ Urgent ► **Justification****CONSULTATIONS:**

Secteur/Région - Sector/Region	Poste - Position	Nom - Name	Date
AANDC Communications	Communications Advisor	Caroline Dauphinais	Aug. 7, 2015
DLSU	Counsel	Nathan Benson	Aug. 7, 2015

**APPROBATIONS - APPROVALS:****Secteur responsable - Lead Sector**

Secteur/Région - Sector/Region	Poste - Position	Nom - Name	Signature	Date
RAI - RIA	A/Director	Manon Paquet		19/08/15
RAI - RIA	A/DG	Eric Guimond		2015/08/10
RAI - RIA	SMA - ADM	Andrew Saranchuk		AUG 12 2015

<b>Sous-ministre déléguée</b> Associate Deputy Minister	<b>Sous-ministre</b> Deputy Minister	►	(AAAAMMJJ) (YYYYMMDD)
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**INFORMATION ADDITIONNELLE - ADDITIONAL INFORMATION:**

<b>Mode de transmission - Transmission Method</b>	<b>Responsable - Lead</b>
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<b>Instructions spéciales - Special Instructions</b>
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**SECRET – RIA5570**  
**(Protected B less the Annexes)**

**THE CORPORATION OF CATHOLIC ENTITIES PARTY TO THE RESIDENTIAL  
SCHOOLS SETTLEMENT**

Decision by the Deputy Minister

**DATE:** August 12, 2015

**SUMMARY**

- This note seeks your instructions on whether to appeal the July 16, 2015 Court Decision (see Annex A) which ruled that a contract was formed between Canada and the Corporation of Catholic Entities Party to the Indian Residential Schools Settlement such that, in consideration of \$1.2 million to be paid by the Corporation, all issues between the parties relating to the Corporation's obligations under Indian Residential Schools Settlement Agreement have been settled.
- On December 24, 2013, Canada filed a Request for Direction concerning the financial obligations of the Corporation under the Settlement Agreement.

- However, the Corporation interpreted its \$1.2 million offer and discussions between counsel as a release from all its obligations under the Settlement Agreement and not just the legal fees issue. Accordingly, it filed a Request for Direction on November 18, 2014, seeking an order that all matters are now settled between the parties, including a broad final release. Canada argued that the \$1.2 million settlement related strictly to the matters raised in the December 2013 Request for Direction.
- The Court's Decision of July 16, 2015, found in favour of the Corporation but was not clear on the scope of the release, specifically whether the Corporation was released from all further obligations under the Settlement Agreement or must still meet the preconditions set out in paragraphs 4.5 to 4.6 of Schedule O-3 (Annex B) to benefit from the releases in these sections (see also the Department of Justice Canada's opinion in Annex C). Canada must decide whether to:

- Your decision is needed by August 14, 2015, to meet the filing date of August 17, 2015.

**RECOMMENDATION**

•

☐ I concur

☐ I do not concur

☐ I wish to discuss further

Deputy Minister/

Associate Deputy Minister: \_\_\_\_\_ Date: \_\_\_\_\_

**SECRET – RIA5570**  
**(Protected B less the Annexes)****BACKGROUND**

- [REDACTED]
- [REDACTED] (RIA4770). In September 2014, after consultation with the Assembly of First Nations, Canada and the Corporation agreed to settle the matter for \$1.2 million.
- It subsequently became apparent that Canada and the Corporation held different views as to the nature and extent of the release. The Corporation maintained that when Canada agreed to the \$1.2 million, it also agreed to provide the Corporation with a full and final release of all its obligations, in keeping with the releases set out in Sections 4.5 and 4.6 of Schedule O-3 of the Settlement Agreement. Counsel for the Corporation expressly cited these sections during the course of the negotiations. These sections set out a very broad release and indemnity, provided that the Catholic Entities meet all of their obligations under Schedule O-3. For example, Section 4.5 states: "In the event that the terms of this Agreement are fully complied with [...], the Government will release and forever discharge each Catholic Entity from any and all causes of action, claims or demands for damages for Indian residential School abuse claims or claims included in the Approval Orders."
- [REDACTED]  
[REDACTED] (RIA5003)  
[REDACTED]
- On November 18, 2014, the Corporation filed a Request for Direction seeking an Order that all matters are now settled between the parties on the terms agreed upon by counsel in their discussions, including a broad, full and final release (Annex E). In its response of November 27, 2014, Canada argued that only the quantum of the settlement was agreed upon and that the terms of release were not concluded. Cross examinations of the parties took place on April 30, 2015. The hearing took place June 3, 2015.
- The Decision, released July 16, 2015, found in favour of the Corporation but was not clear on the scope of the release. At paragraph 5 it concludes "that there is an enforceable settlement of all issues between these parties relating to the Corporation's obligations under the Settlement Agreement."

s.20(1)(c)

s.21(1)(b)

**SECRET – RIA5570**  
**(Protected B less the Annexes)**

- Following the Decision, counsel for the Corporation provided a draft General Final Release (Annex E) for consideration. This draft Release contains a very broad interpretation of the scope of the release granted by the Court. It cites the Court's finding that "there is an enforceable settlement of all issues between these parties relating to the Corporation's obligations under the Settlement Agreement" (emphasis added) and provides that Canada releases the Corporation and the Catholic Entities from all "claims and demands whatsoever", whether past, present or future, "arising out of or relating to the ISA and [Schedule O-3 to the Settlement Agreement]." In other words, the Corporation is of the view that it meets the precondition of paragraphs 4.5 and 4.6.
- Canada's Appeal period ends August 17, 2015, and the Department of Justice Canada is seeking instructions by August 14, 2015.

**CONSIDERATIONS**



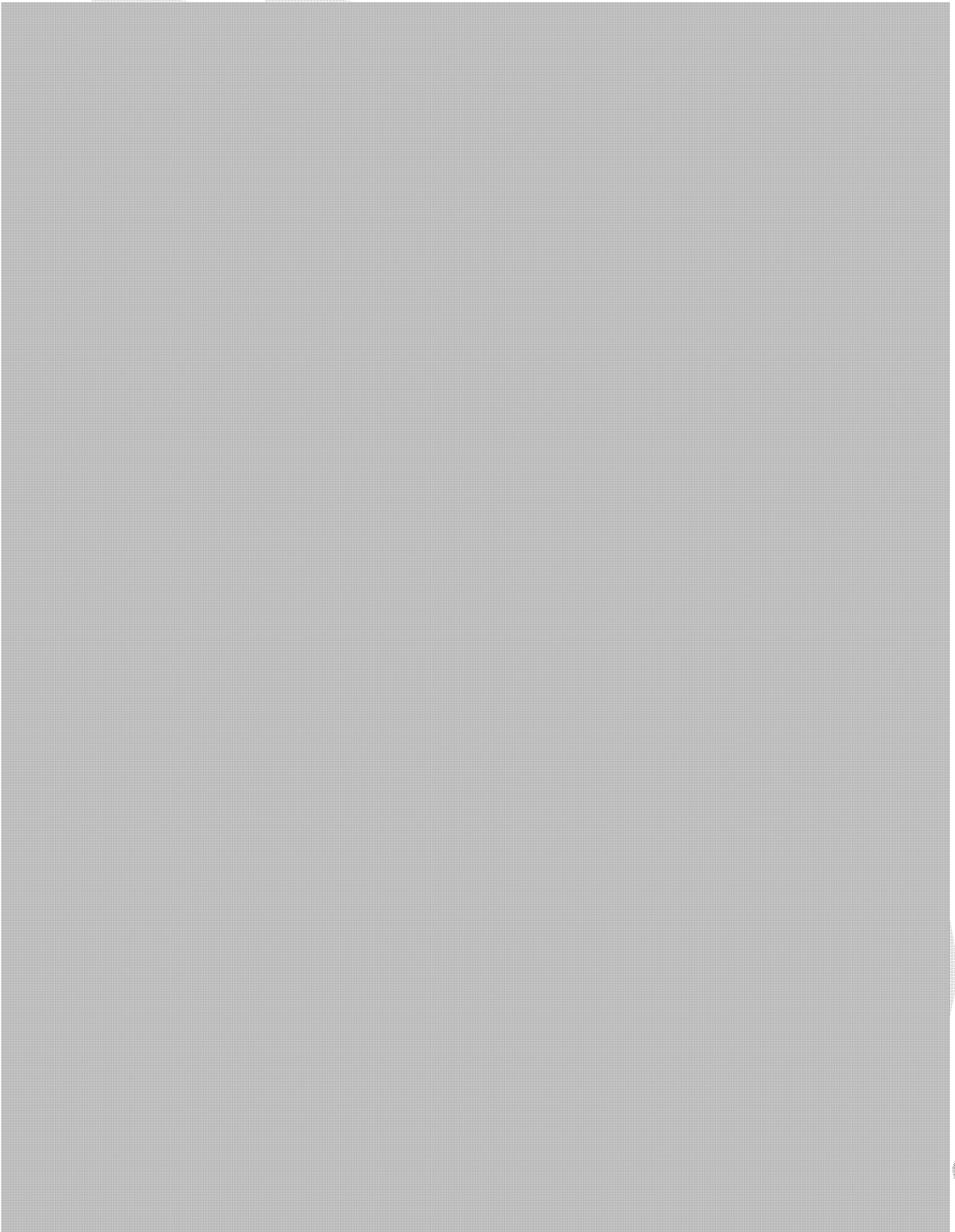
s.20(1)(c)

s.21(1)(a)

s.21(1)(b)

s.23

**SECRET – RIA5570**  
**(Protected B less the Annexes)**





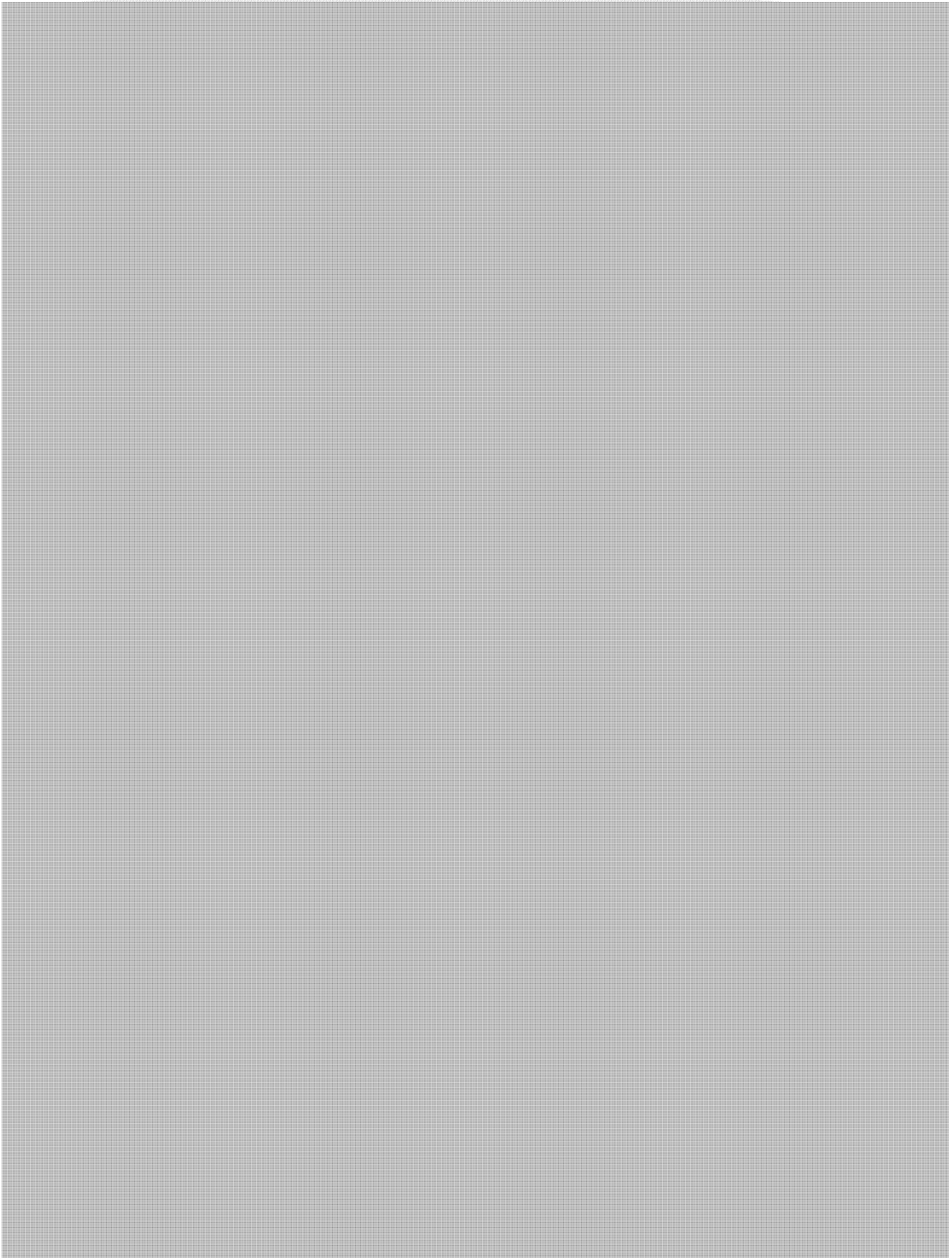
s.20(1)(c)

s.21(1)(a)

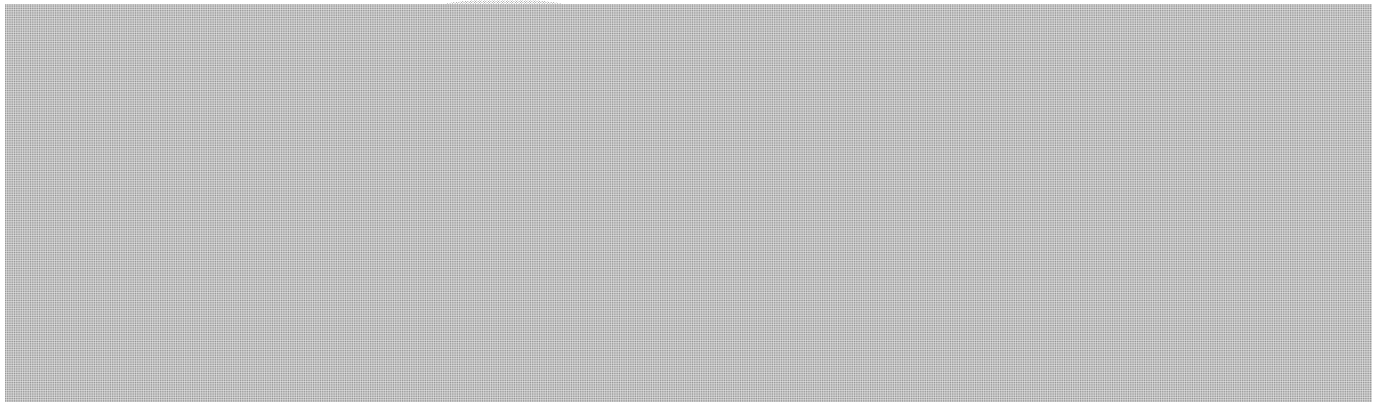
s.21(1)(b)

s.23

**SECRET – RIA5570**  
**(Protected B less the Annexes)**



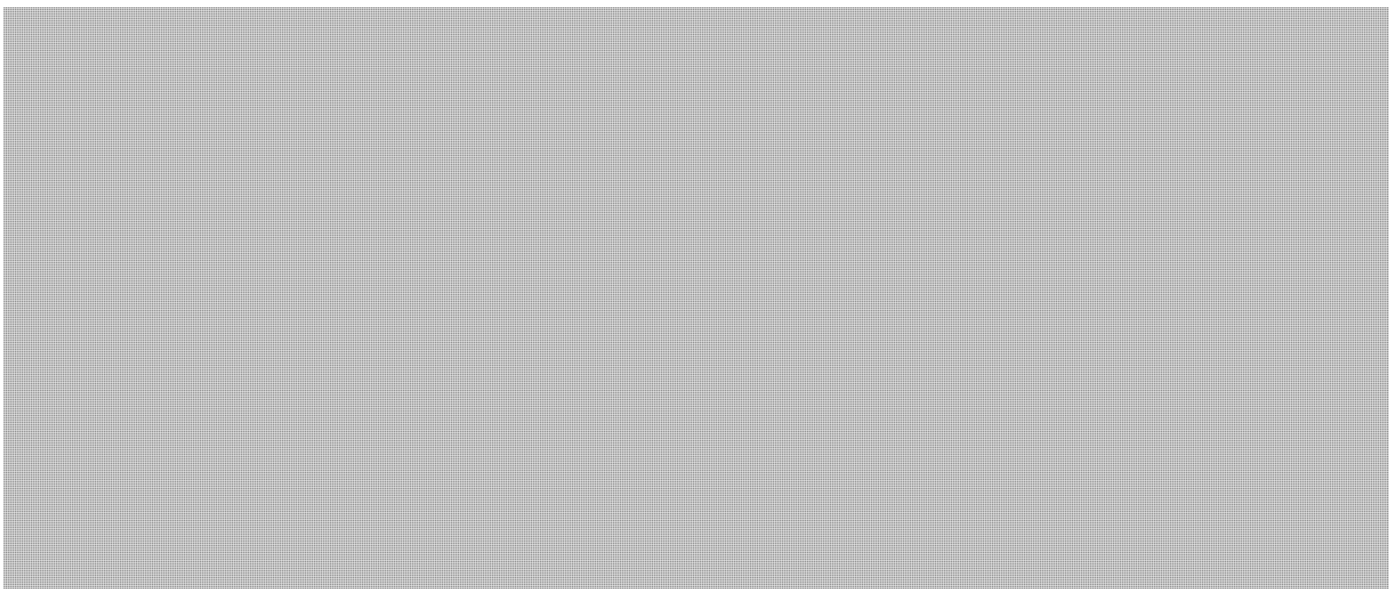
**SECRET – RIA5570**  
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## **COMMUNICATIONS CONSIDERATIONS**

- The Indian Residential Schools Settlement Agreement has attracted a great deal of interest among regional/national/international media and stakeholders, and has raised awareness of the legacy of Indian residential schools among a broad spectrum of Canadians. A few articles in the media criticize the Catholic Churches for not being co-operative in releasing documents from the Indian residential schools era requested by the Truth and Reconciliation Commission, but no media articles focus on the Corporation's financial obligations under the Settlement Agreement.
- Media lines on this litigation are in place and will be updated to reflect the option that will be chosen by the Department.
- Messaging will show that Canada is committed to reconciliation while at the same time ensuring that its legal obligations to the other parties of the Settlement Agreement are not compromised.

## **NEXT STEPS**





**SECRET – RIA5570**  
**(Protected B less the Annexes)**

**ANNEXES**

Annex A: Queen's Bench for Saskatchewan Decision, July 16, 2015

Annex B: [REDACTED]

Annex C: Schedule O-3 of the Indian Residential School Settlement, May 8, 2006

Annex D: Canada's Request for Direction, December 24, 2013

Annex E: The Corporation's Request for Direction, November 18, 2014

Annex F: RIA4770, Offer to settle from the Corporation of Catholic Entities party to the  
Indian Residential Schools Settlement

Annex G: RIA5003, Offer to settle from the Corporation of Catholic Entities party to the  
Indian Residential Schools Settlement

# QUEEN'S BENCH FOR SASKATCHEWAN

Citation: 2015 SKQB 220

Date: 2015 07 16  
Docket: QBG 816 of 2005  
Judicial Centre: Regina

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BETWEEN:

LARRY PHILIP FONTAINE, *et al.*

PLAINTIFFS

- and -

THE ATTORNEY GENERAL OF CANADA, *et al.*

DEFENDANTS

Counsel:

James S. Ehmann, Q.C.  
Wayne Schafer

for CCEPIRSS and the Catholic Entities  
for the Attorney General of Canada

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DECISION  
July 16, 2015

GABRIELSON J.

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## INTRODUCTION

[1] On June 3, 2015, I heard a Request for Directions [RFD] brought on behalf of the Corporation of Catholic Entities Party to the Indian Residential School Settlement Agreement [CCEPIRSS or Corporation] and a group referred to as the Catholic Entities. For reasons explained below, I will refer to this RFD as "RFD #2". The RFD process is the means by which disputes concerning rights and obligations

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created by the Indian Residential Schools Settlement Agreement [IRSSA or Settlement Agreement] are determined.<sup>1</sup> I heard RFD#2 in the capacity of the Saskatchewan Supervising Judge for the purposes of the implementation and administration of the IRSSA.

[2] The parties accept that this court has jurisdiction to hear and decide this RFD. They differ somewhat as to the source of this court's jurisdiction. CCEPIRSS claims that the court's jurisdiction emanates specifically from its powers to enforce a negotiated agreement according to its terms on a summary basis. Canada accepts that this court has jurisdiction to determine this matter, without citing any specific authority.

[3] In its most straightforward aspect, this court's jurisdiction to hear and determine this RFD is derived from the orders approving and implementing the Settlement Agreement, and specifically the approval order dated December 15, 2006 and the implementation order dated March 8, 2007. As long as the issues lend themselves to determination by way of summary procedure (a point on which all parties are in agreement), there is no impediment to having the issues in RFD #2 determined by this court through the Request for Directions process.

[4] The narrow issue on RFD#2 was whether CCEPIRSS and Canada have entered into an enforceable settlement of all issues relating to CCEPIRSS' obligations under the Settlement Agreement. CCEPIRSS asserts that there is such an agreement. Canada claims that there is not.

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<sup>1</sup> The RFD process was established by the Implementation Orders made by each of the nine courts that approved the IRSSA. The SKQB Implementation Order is dated March 8, 2007. The Implementation Orders are substantially identical. Appended to each is the "Court Administration Protocol", which provides for what it terms "a streamlined process for addressing all matters that require court orders, directions or consideration during the course of the administration (of the Settlement Agreement)".

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[5] For the reasons set out below, I conclude that there is an enforceable settlement of all issues between these parties relating to CCEPIRSS' obligations under the Settlement Agreement.

## **BACKGROUND FACTS**

[6] For the most part, the background facts were not in dispute. These facts can be divided into three parts which I list as (a), (b) and (c).

### **(a) The Indian Residential Schools Settlement Agreement**

[7] The various emanations of the Roman Catholic Church in Canada [Catholic Entities] are parties to the Settlement Agreement. The Catholic Entities agreed to assume three kinds of obligations:

- a. *First*, to pay \$29 million in cash [Financial Obligations];
- b. *Second*, to contribute specified in-kind services with a value of \$25 million [In-Kind Obligations]; and
- c. *Third*, to make best efforts through the seven-year period following the day after the coming into force of the Settlement Agreement to raise \$25 million through a Canada-wide fundraising campaign, which came to be known as Moving Forward Together [Fundraising Obligations]. The Settlement Agreement specifically provided that best efforts shall be deemed to have been made where the fundraising campaign demonstrates on a Canada-wide level in each of the seven years an approach and means that is consistent with the approach and means used

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by professionally managed national fundraising campaigns, including those operated by universities and hospital foundations.<sup>2</sup>

[8] Because there was no central body with legal personality to represent them, the Catholic Entities established a not-for-profit corporation, namely CCEPIRSS, for the exclusive purpose of implementing and carrying out the Catholic Entities' obligations under the Settlement Agreement.

**(b) RFD #1**

[9] On December 24, 2013, Canada submitted an RFD in respect of matters relating to CCEPIRSS' Financial Obligations under the Settlement Agreement [RFD #1]. In RFD #1, Canada sought directions with respect to the following issues:

- a. Whether the legal fees incurred by CCEPIRSS to administer the Financial Obligations of the Catholic Entities under the Settlement Agreement could be deducted as "reasonable administration costs";
- b. Whether the legal fees claimed by CCEPIRSS were "reasonable administration costs" pursuant to the Settlement Agreement;
- c. Whether "reasonable administration costs" incurred by CCEPIRSS should be deducted after the minimum 80 percent of the Net Amount referred to in the Settlement Agreement was transferred from CCEPIRSS to the Aboriginal Healing Foundation;
- d. Whether Canada's consent is required before CCEPIRSS could pay the amounts claimed as reasonable administration costs; and

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<sup>2</sup> Schedule O-3 to the Settlement Agreement, Exhibit "F" to the Affidavit of Gordon Kuski dated February 27, 2014 ("Kuski Affidavit")

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- e. Whether amounts deducted as administration costs without Canada's consent must be reimbursed by the Catholic Entities, CCEPIRSS or the Board of Directors.

[10] CCEPIRSS filed a response, and both parties filed evidence in relation to RFD #1. Both parties were represented by experienced counsel. CCEPIRSS was represented by Gordon Kuski and Canada was represented by Alexander Gay.

[11] Although the grounds raised in RFD #1 were relatively narrow and confined to the issue of CCEPIRSS' Financial Obligations under the Settlement Agreement, some of the evidence strayed somewhat outside the four corners of the issues raised in RFD #1.

[12] For example, Canada's affiant on RFD #1, Ms. Stellick, largely gave evidence on RFD #1 concerning Canada's concerns with respect to deductions CCEPIRSS had made from the \$29 million in Financial Obligations. However, she also deposed as follows at para. 55 of her affidavit:

55. As of today, there have been many problems in getting the Catholic Entities to fulfill their obligations under the IRSSA. CCEPIRSS has failed to pay the amounts owed to the AHF and to programs, they have failed to meet their \$25M fundraising obligation and they have failed to garner an adequate amount of investment income. The amount raised, which is reported to be about \$3M, is a fraction of what they had committed to in the IRSSA. The obligation to raise funds is subject to best efforts and thus Canada is not in a position to take enforcement measures.

[13] Not surprisingly, Ms. Stellick was cross-examined on this statement. With respect to CCEPIRSS' In-Kind Obligations, Ms. Stellick gave evidence as follows:

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23. Q: ... But separate and apart from the \$1.6 million [the amount at issue in RFD #1] ... is it the government's position that – had it been the government's position that the 25 million in-kind obligation had been met?

A: I don't think there is an intention to dispute that.

24. Q: All right. So for the purposes of what we are talking about, let's just park the in-kind obligation.

A: For the In-Kind Services, which were not any financial donations, they were really just a sort of subtractive process.

25. Q: Yes. So is there any complaint presently extant on Canada's part about how the in-kind thing was handled?

A: I don't think so now. I think initially – from what I saw in the files – there were discussions, and perhaps – and some perhaps disagreement over what would be included.

26. Q: Right.

A: From what I saw in the records, that that became resolved. And, at this point, I am not aware of any disputes or concerns.<sup>3</sup>

[14] Ms. Stellick was also cross-examined about Canada's position with respect to CCEPIRSS Fundraising Obligations. She noted the "huge gap" between the \$25 million that had been hoped to be raised versus the \$3-4 million that had been raised, and said, "Well, it is just a big gap, and it seems like, you know, you wonder if there couldn't be more, have been done."<sup>4</sup> As to Canada's position she said, "I think there is some concerns perhaps that more efforts couldn't have been made to raise further funding from across Canada".<sup>5</sup> When asked about what suggestions Canada had for ensuring that CCEPIRSS and the Catholic Entities made their best efforts to

<sup>3</sup> Cross-examination of Pamela Stellick ("Stellick Cross") at Q 23-26, Exhibit E to Kuski Affidavit

<sup>4</sup> Stellick Cross, *supra* at Q 157

<sup>5</sup> Stellick Cross, *supra* at Q 160

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fundraise raise \$25 million, Ms. Stellick answered, "I don't think it is Canada's place to offer or suggest or tell them how to run their fundraising campaign."<sup>6</sup>

[15] As counsel for Canada on RFD #1, Mr. Gay reviewed Ms. Stellick's affidavit and was present during her cross-examination. He raised no issue at the time with Ms. Stellick's evidence. On RFD#2, Mr. Gay gave evidence that he was not concerned during RFD #1 with respect to matters that were outside the limited scope of RFD #1. While he expressed some concern about whether CCEPIRSS had, in fact, satisfied its obligations with respect to its In-Kind Obligations and Fundraising Obligations, he had no knowledge as to whether Canada currently takes the position that CCEPIRSS is in default of either or both of those obligations.

### (c) Settlement Negotiations

[16] Mr. Kuski obtained instructions from his clients to settle not just RFP #1, but all matters between the parties relating to the Settlement Agreement.<sup>7</sup>

[17] Further to those instructions, on June 26, 2014, Mr. Kuski wrote a letter to Mr. Gay which stated, "I have been instructed to make the following offer to you in order to *settle all matters between the parties*".<sup>8</sup> Mr. Kuski made no specific reference to RFD #1 in the letter, nor did he emphasize the portion of the letter that has been italicized here. The caption line of the June 26, 2014 letter included a reference to the Catholic Entities, who were not directly parties to RFD #1.

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<sup>6</sup> Stellick Cross, *supra* at Q 161

<sup>7</sup> Kuski Affidavit, *supra*, para 15.

<sup>8</sup> Emphasis added.



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[18] Mr. Kuski's June 26, 2014 letter clearly proposed that a term of the settlement would be that Canada would "provide to CCEPIRSS and the Catholic Entities a General Release with respect to all matters between the Parties, and more specifically, will provide a Release and an Indemnity in accordance with the terms contemplated by Section 4.5 and Section 4.6 of the Settlement Agreement, Schedule 'O-3'."

[19] Sections 4.5 and 4.6 of Schedule O-3 to the Settlement Agreement provide as follows:

4.5 In the event that the terms of this Agreement are fully complied with then notwithstanding anything to the contrary herein or elsewhere contained, the Government will release and forever discharge each Catholic Entity from any and all causes of action, claims or demands for damages for IRS Abuse Claims or claims included in the Approval Orders. In such event the Government will also agree not to make any claims or demands or commence, maintain or prosecute any action, cause or proceeding for damages, compensation, loss or any other relief whatsoever against any Catholic Entity arising directly or indirectly from any IRS Abuse Claim or other claims included in the IRSSA.

4.6 So long as a Catholic Entity is complying with its obligations under this Agreement, the Government agrees to indemnify and save harmless such Catholic Entity from any and all claims for Compensation payable to a Claimant in an IRS Abuse Claim. If a Catholic Entity is not complying with its obligations under this Agreement, then the Government will not indemnify and save harmless such Catholic Entity for the period of time it is not in compliance.

[20] Following the delivery of Mr. Kuski's June 26, 2014 letter, negotiations between the parties ensued. Nothing was memorialized in writing until September of 2014. The parties agree there was a phone call on September 17, 2014, between Mr. Kuski for CCEPIRSS on the one hand, and Mr. Gay and Ms. McConville for Canada on the other. It is agreed that during this call, Mr. Kuski raised CCEPIRSS' offer

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from \$1 million to \$1.2 million. Mr. Kuski also claims that during this call, Mr. Gay confirmed to Mr. Kuski that the conditions regarding a final release as outlined in the June 26, 2014 letter are "of course" fine. Mr. Gay firmly denies having said this.

[21] The written communications pick up following this call. On September 18, 2014 at 7:08 a.m., Mr. Gay wrote to Mr. Kuski saying, "The clients accept \$1.2M as a quantum. The thing that needs to be resolved is the paperwork and the wording on the release documents. How do you propose to proceed?"

[22] Mr. Kuski responded at 9:13 a.m. to Mr. Gay with an email that said, "Thanks for this. We have a deal. I'll call you today to discuss logistics."

[23] Mr. Kuski then sent a letter to Mr. Gay, also dated September 18, 2014 and delivered by email. The letter included the following paragraphs:

This will confirm that the [CCEPIRSS], the Catholic Entities, and Canada (the "Parties") have settled all matters between them on the basis that CCEPIRSS will pay to Canada the sum of \$1.2 Million.

As part of the settlement Canada agrees that it will provide to CCEPIRSS and the Catholic Entities a General Release with respect to all matters between the Parties, and more specifically, will provide a Release and an Indemnity in accordance with the terms contemplated by Section 4.5 and Section 4.6 of the Settlement Agreement, Schedule "O-3" (as was set out in my letter to you of June 26, 2014).

[24] Mr. Gay responded by way of email at 11:37 a.m. on September 18, 2014. That email said:

I received your letter of today's date.

For the moment, we have agreement on quantum. We have no agreement on the terms of the settlement. I have not seen the paper

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that you propose. Paras. 4.5 and 4.6 of Schedule O-3 say what they say and the Catholic Entities benefit from these terms, regardless of what is said in the eventual release. I am not sure that we need to re-state what has been agreed to in the Settlement Agreement.

In any event, I am sure that we will be able to discuss and get this thing finalized. I am open to suggestions.

[25] At 4:02 p.m. on September 18, 2014, Mr. Kuski sent Mr. Gay an email attaching a draft General Final Release. The General Release document itself had a "draft" watermark stamped on it. The covering email read:

Please see attached draft General Final Release.

Please let me have your comments. As I indicated to you in our telephone conversation, I have not yet shared this with anyone else so it is entirely possible that there will be some suggested changes coming from our side.

Hopefully this will help us get to where we want to go.

[26] The draft General Release prepared by Mr. Kuski was, for the most part, consistent with his letter of June 26, 2014 (subject to quantum, which had increased from \$1 million to \$1.2 million) and his letter of September 18, 2014. There is one important qualification. While Mr. Kuski's two letters had offered a payment in exchange for releases and indemnities as provided in ss. 4.5 and 4.6 of Schedule O-3 to the Settlement Agreement, the draft General Release proposed that Canada would provide releases and indemnities as provided in ss. 4.5, 4.6 *and* 4.7 of Schedule O-3 to the Settlement Agreement. As far as the record before this court shows, this was the first time any party had raised s. 4.7<sup>9</sup>.

<sup>9</sup> Section 4.7 of Schedule O-3 to the Settlement Agreement provides:

"Where the Corporation certifies that a Catholic Entity has fully complied with its obligations under Sections 3.3 and 3.5 of this Agreement, and where best efforts have been made to date and the Canada-Wide campaign is successful having regard to other professionally managed national fundraising campaigns, and the Catholic Entity commits to continue its best efforts in the Canada-Wide campaign, the Government shall release and forever discharge that Catholic Entity from any and all

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[27] During his cross-examination, Mr. Gay testified that when he saw that Mr. Kuski's proposed General Release included a release of all matters between the parties under the Settlement Agreement, and not just matters related to RFD #1, he thought Mr. Kuski's action in doing so was "cheeky" and "pushing the envelope". Mr. Gay also testified, "I knew full well that it wasn't something I was prepared to recommend to the clients."<sup>10</sup> However, Mr. Gay did not say any of this to Mr. Kuski at the time. Rather, Mr. Gay simply sent an email asking for the draft General Release in Word format, which Mr. Kuski's office provided.

[28] On September 24, 2014, Mr. Kuski sent Mr. Gay an email asking where he was with respect to the Release. Mr. Gay responded that the document "Went to client. Last I heard they were fine, but needed another level of approval. Another day is likely all I need. I did make a few edits as well." Again, Mr. Gay did not take this opportunity to advise Mr. Kuski that there had been no meeting of the minds in terms of the essential issue of the scope of the release.

[29] Mr. Kuski responded with an email that said, "Thanks Alex. But please remember my clients have not seen my draft and they may have some comments."

[30] On September 30, 2014, Mr. Gay sent Mr. Kuski an email that read, "Sorry for the delay. I have made a few changes to the document. I know that you need to present it to your client as well. I will need to also put it to the ADNM, but I am reasonably certain that it would be approved as is." A draft General Final Release was appended to Mr. Gay's email. Instead of releasing CCEPIRSS and the Catholic Entities from all matters arising out of the IRSSA (as proposed by Mr. Kuski), the

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causes of actions, claims or demand for damages for IRS Abuse Claims or claims included in the Approval Orders and shall not make any claim or demand or commence, maintain or prosecute any other cause or proceeding for Compensation made against that Catholic Entity in an IRS Abuse Claim."

<sup>10</sup> Gay cross-examination, pages 68-69.

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version proposed by Canada would release CCEPIRSS and the Catholic Entities only from matters relating to the payment to be made by CCEPIRSS to the Aboriginal Healing Foundation (that is, the matter that was directly related to RFD #1). The draft General Release sent by Mr. Gay to Mr. Kuski was not redlined, and Mr. Gay did not expressly advise Mr. Kuski of the significant difference between the release proposed by Mr. Gay and the earlier version proposed by Mr. Kuski.

[31] On cross-examination, Mr. Kuski testified that when he read the version of release sent to him by Mr. Gay, he was “very concerned and upset” because, in his view, Mr. Gay had “changed the deal”.<sup>11</sup> At the time, Mr. Kuski did not accuse Mr. Gay of this in writing, although he said he discussed that with Mr. Gay over the phone. Rather, he tried to “finesse” the deal by sending a letter dated October 1, 2014, in which Mr. Kuski set out his clients’ position and asked Mr. Gay to “consider our position and obtain instructions from your client to execute a modified General Final Release” in terms that Mr. Kuski proposed. Mr. Gay responded by way of email that he would put Mr. Kuski’s letter to his client and seek instructions, but that, “We may have a problem.”

[32] Following further discussion, on November 10, 2014, Canada refused to consent to the broad release as proposed by Mr. Kuski. RFD #2 was commenced by CCEPIRSS and the Catholic Entities shortly thereafter.

## **SUBMISSIONS BY PARTIES**

[33] On behalf of CCEPIRSS and the Catholic Entities, Mr. Ehmann organized his submissions around three central points: (1) it was no answer for

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<sup>11</sup> Kuski cross-examination, page 27

Canada to point to the fact that the settlement that CCEPIRSS contends was formed extended beyond what was at issue in RFD #1, since parties can, by agreement, extend the scope of their settlement to matters outside those clearly pleaded; (2) there was a “meeting of the minds” (sometimes referred to as “*consensus ad idem*”); and (3) Canada’s counsel had authority to bind his client – and did so.

[34] In his responding submissions on Canada’s behalf, Mr. Schafer pointed to: (1) the context in which settlement negotiations had to be considered, namely, the issues arising in RFD #1, which created the framework under which all settlement negotiations occurred; (2) evidence, including from Mr. Kuski’s cross-examination, militating against a finding that there was a “meeting of the minds”; and (3) evidence tempering the proposition that Mr. Gay had (and held himself out as having) the authority to bind his client.

## ANALYSIS

[35] The legal principles governing determinations as to whether enforceable settlements have been reached are not controversial:

- a. There will be an enforceable settlement agreement when the evidence proves on the balance of probabilities that an objective reasonable bystander, knowing the facts, would conclude that the parties consented to the terms of the settlement with the intent to be bound by the same.<sup>12</sup>
- b. When a court is asked to find a contract in correspondence, and not one particular note or executed memorandum, the whole of that which passed between the parties must be taken into consideration.<sup>13</sup>

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<sup>12</sup> *Lacroix v. Loewen*, 2010 BCCA 224 (CanLII)

<sup>13</sup> *Tether v. Tether*, 2008 SKCA 126

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- c. In such cases, the court should ask:
  - i. was there a meeting of the minds that would be manifest to the reasonable bystander;
  - ii. was there consensus on all essential terms of the agreement; and
  - iii. did the parties make their agreement conditional upon, and subject to, execution of a formal document?<sup>14</sup>
- d. The question of contract formation may be distinct from the question of contract completion. If there is agreement on all essential terms, then the absence of formal documentation will not be a bar to enforcing the agreement unless it is clear that the agreement was only a tentative one that was not intended to be binding until the documentation was complete.<sup>15</sup>
- e. When settlements are negotiated between counsel, there is a presumption that counsel has authority to bind his or her client. This presumption is rebuttable by evidence that both parties understood that counsel was acting with limited authority.<sup>16</sup>

(a) **Was there a meeting of the minds?**

[36] In the present case, the parties agree that CCEPIRSS agreed to pay \$1.2 million to Canada, and that Canada agreed to accept that amount. The parties agree that in exchange for this payment, Canada was required to give a release. The only issue is whether the parties were in agreement as to the general scope of the release.

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<sup>14</sup> *Tether*, *supra*, at para 62

<sup>15</sup> *Fieguth v. Acklands Ltd.*, (1989) 59 DLR (4th) 114 (BCCA); *Great Sandhills Terminal Marketing Centre Ltd. v. J-Sons, Inc.*, 2008 SKCA 16

<sup>16</sup> See, for example, *Iverson v. Iverson*, 2009 SKQB 246; *IPC Insurance Strategies Inc. v. Sawa*, 2009 SKCA 80

(b) Was there consensus on all essential terms of the agreement?

[37] It is the position of CCEPIRSS and the Catholic Entities that they expressly agreed to pay \$1.2 million in exchange for broad releases and indemnities in accordance with ss. 4.5 and 4.6 of Schedule O-3 to the Settlement Agreement. Importantly, Canada in response does not appear to say that there was an express agreement between the parties that CCEPIRSS would pay \$1.2 million in exchange for a release of matters relating to RFD #1. Rather, Canada's position is that the parties would deal "with quantum first and terms second."<sup>17</sup>

[38] Canada's interpretation of the communications between the parties presumes that CCEPIRSS and the Catholic Entities would agree to pay a significant sum of money in a settlement without knowing precisely what it was they were settling. In my view, that is not a reasonable interpretation of what transpired. The fact of a settlement implies a release, and it is not logical to say that the quantum of the settlement was agreed to but the fundamental and essential scope of the release was not. That is not how reasonable parties negotiate settlements.

[39] If Canada's position during settlement negotiations was that it would only accept \$1.2 million to settle the narrower matters raised by RFD #1, then one would have expected Canada to say so very clearly at a much earlier time. The balance of the record before me proves that, despite the relatively narrow issues raised by RFD #1, the parties were negotiating with respect to all matters at issue between them in relation to the Settlement Agreement.

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<sup>17</sup> Gay cross-examination, page 56



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- a. Ms. Stellick's affidavit and cross-examination on RFD #1 dealt, at least in part, with the broader issues of the Settlement Agreement, not just the issues raised by RFD #1.
- b. Mr. Kuski's June 26, 2014 letter made it plain that the settlement was to release "all matters" between CCEPIRSS, the Catholic Entities and Canada, and was to include the very general releases contemplated by ss. 4.5 and 4.6 of Schedule O-3 to the Settlement Agreement. There is nothing in writing to suggest that Canada was opposed to settlement negotiations on this basis.
- c. I acknowledge that there is disagreement about whether, during a phone call on September 17, 2014, Mr. Gay indicated that the releases sought by Mr. Kuski were "of course fine". Mr. Kuski deposes this occurred; Mr. Gay deposes that it did not. Both parties have consented to the RFD process to resolve this dispute, and this is a summary process that is not suited for resolving issues of credibility. Accordingly, my findings are based on the written communications between the parties.
- d. The written evidence is clear that Mr. Kuski, at least, continued to be of the view that settlement negotiations were proceeding on the basis that any sum paid by his clients to Canada would resolve all issues between the parties, and not just the issues pleaded in RFD #1. Not only was this communicated in his letter of June 26, 2014, but it was also an express term outlined in his letter of September 18, 2014, which he wrote to "confirm" the settlement that had been reached.
- e. Although Mr. Gay responded to that letter by saying (in part) "we have no agreement on the terms of the settlement", the balance of the email from Mr. Gay to Mr. Kuski sent September 18, 2014 at 11:37 a.m. would lead a reasonable bystander to conclude that there was no

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controversy over including general releases and indemnities in accordance with ss. 4.5 and 4.6 of Schedule O-3 to the Settlement Agreement. Nor would a reasonable bystander conclude that there was controversy over releasing “all matters” between CCEPIRSS, the Catholic Entities and Canada.

- f. When Mr. Gay received Mr. Kuski’s proposed General Release later on September 18, he took no steps to advise Mr. Kuski that an essential term of that Release – namely, its scope – was unacceptable to Canada.
- g. Mr. Gay’s revised version of the Release provides that Canada “agrees that the provisions concerning releases and indemnities as provided in ss. 4.5, 4.6 and 4.7 of Schedule “O-3” of the Settlement Agreement may apply to this General Final Release” [emphasis added]. Apart from the addition of the word “may”, this section of Canada’s proposed Release is identical to the one proposed by Mr. Kuski. This provision of the Release makes no sense if the Release is intended to be narrow in scope, as Canada now contends.

(c) **Was the settlement conditional upon the execution of a formal document?**

[40] I find that the settlement was not subject to or conditional upon the execution of formal documentation. I find on the evidence that a reasonable bystander would conclude that, as of 7:08 a.m. on September 18, 2014, counsel had agreed that CCEPIRSS would pay Canada \$1.2 million in exchange for the broad releases and indemnities contemplated by ss. 4.5 and 4.6 of Schedule O-3 to the Settlement Agreement. Neither Mr. Kuski’s settlement offer letter of June 26, 2014 nor Mr. Gay’s email acceptance of September 18, 2014 make mention of any settlement being conditional upon execution of formal documents.

(d) Was counsel's authority to settle qualified?

[41] The only remaining issue is whether a reasonable bystander would have understood that the agreement of counsel was subject to approval by others at Canada. I find that such a restriction is not reasonable in the circumstances.

[42] Canada submitted that Mr. Kuski, as a senior counsel with experience litigating against Canada, would have understood that there were levels of approval that Mr. Gay required. Even if I were to make that finding, on the record before me I find it was reasonable for Mr. Kuski to have determined that Mr. Gay had received approval on all material aspects of the settlement prior to accepting the settlement offer on September 18, 2014.

[43] It is true that the Release was stamped "Draft", that both counsel anticipated their clients might have some comments on the wording of the Release, and that both counsel communicated to each other that their clients might have comments on the wording of the Release. However, it would reasonably have been expected by the parties that the comments of their respective clients would amount to wordsmithing, and not to the essential terms of the deal, which were that CCEPIRSS would pay \$1.2 million in exchange for the releases and indemnities contemplated by ss. 4.5 and 4.6 of Schedule O-3 to the Settlement Agreement.

[44] Whether Mr. Gay in fact had authority to settle matters with Mr. Kuski is not an issue I need to decide. The only issue before me is whether any limits on Mr. Gay's authority that might have existed were communicated to Mr. Kuski. In light of the communications between the parties, which I have reviewed above, and the legal presumption that counsel have their client's authority unless the contrary is clearly

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articulated, I find the reasonable bystander would conclude that Mr. Gay had the authority to enter into the essential deal that he made.

## CONCLUSION AND DIRECTION

[45] I have concluded that there is an enforceable settlement relating to CCEPIRSS' obligations under the Settlement Agreement.

[46] Consequently, I grant a declaration that there is a binding agreement between and among Canada, CCEPIRSS and the Catholic Entities providing that upon the payment by the Catholic Entities, through CCEPIRSS, of the sum of \$1.2 million to Canada, or its nominee, CCEPIRSS and the Catholic Entities are entitled to releases and indemnities in accordance with ss. 4.5 and 4.6 of Schedule O-3 to the Settlement Agreement, without restriction.

[47] Since my conclusion (as urged by CCEPIRSS and the Catholic Entities) is that the deal was struck by the parties by 7:08 a.m. on September 18, I cannot find that CCEPIRSS and the Catholic Entities are entitled to a release and indemnity in accordance with s. 4.7 of Schedule O-3 to the Settlement Agreement. Section 4.7 was not clearly contemplated by the parties at the time the settlement was reached. No evidence was led to explain why this section only appeared for the first time in the proposed draft General Release prepared by Mr. Kuski (which was sent after the agreement was made), rather than in the communications between the parties that preceded the agreement being made.

[48] The parties may make written submissions as to costs of up to five (5) pages each, provided that those submissions are served and filed within 10 calendar

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days of the release of this decision.



J.

N.G. GABRIELSON

**Pages 65 to / à 76  
are withheld pursuant to sections  
sont retenues en vertu des articles**

**21(1)(b), 21(1)(a), 23**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

SCHEDULE "O-3"

**SETTLEMENT AGREEMENT**

THIS AGREEMENT ENTERED INTO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006

Between

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
AS REPRESENTED BY  
THE MINISTER RESPONSIBLE FOR THE OFFICE OF  
INDIAN RESIDENTIAL SCHOOLS RESOLUTION OF CANADA**  
(hereinafter referred to as the "Government")

and

**THE CATHOLIC ENTITIES NAMED IN SCHEDULE A**  
(hereinafter referred to as the "Catholic Entities")

and

**EPISCOPAL CORPORATION OF SASKATOON**

and

**THE • CORPORATION** (name to be identified)

WHEREAS the Government and certain Catholic Entities participated in developing and operating residential schools for Aboriginal children in Canada;

AND WHEREAS representatives of the Government and the Catholic Entities are parties to an Agreement in Principle amongst themselves, plaintiffs, the AFN and certain other religious denominations, dated November 20, 2005 in which the Catholic Entities have agreed to enter into a final settlement agreement to give effect to the Agreement in Principle and the Memorandum of Understanding between themselves of the same date;

AND WHEREAS former residential school students have alleged abuse and other wrongs against the Government and certain of the Catholic Entities;

AND WHEREAS the Government and the Catholic Entities recognize that court proceedings can be adversarial, lengthy and costly and often not the best way to resolve abuse claims;

AND WHEREAS the parties desire a fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools directed to, among other things, healing and

reconciliation;

AND WHEREAS the Government and the Catholic Entities have been and remain committed to working jointly with Claimants to assist in their healing and reconciliation and to employ fair, safe, effective and timely processes to validate and resolve IRS Abuse Claims, which processes will seek to avoid causing additional trauma for Claimants while also protecting the reputations of those named as abusers from unfounded allegations;

AND WHEREAS the Government recognizes the importance of enabling the continuing contribution of the Catholic Entities in Canadian society and through this Agreement supports their ongoing viability;

THIS MEMORANDUM WITNESSETH:

## **PART I: DEFINITIONS**

1.1 The following definitions apply throughout this Agreement, and, unless specifically defined therein, in any subsequent documents entered into in furtherance of its objectives:

"Aboriginal Healing Foundation" or "AHF" means the non-profit corporation established under Part II of the *Canada Corporations Act*, R.S.C. 1970, c. C-32 to address the healing needs of Aboriginal people affected by Indian Residential Schools.

"Agreement", "hereto", "herein", and similar expressions refer to this Agreement and any amendments thereto, and include all schedules attached to this Agreement.

"Agreement in Principle" means the agreement signed on November 20<sup>th</sup>, 2005 between the Government as represented by The Hon. Frank Iacobucci, IRS plaintiffs, the AFN, certain Catholic Entities, other religious denominations, and others.

"Approval Orders" means the judgments or orders of the courts certifying the Class Actions and approving the Indian Residential Schools Settlement Agreement pursuant to the applicable class proceedings legislation or the common law.

"Assembly of First Nations" or "AFN" means the national representative organization of the First Nations in Canada created by Charter of its members in 1985.

"Catholic Entity" means any one of the entities set out in Schedule A hereto.



“Catholic Entities” means the entities set out in Schedule A hereto.

“Claimant” means an individual who is entitled to make a claim under the Dispute Resolution Model or Independent Assessment Process established under the Indian Residential Schools Settlement Agreement or a former student of an IRS or other person who has opted out of the Settlement Agreement and has made an IRS Abuse Claim.

“Compensation” means damages, Costs and interest as awarded or agreed upon payable to a Claimant in an IRS Abuse Claim.

“Corporation” means the corporation established by the Catholic Entities pursuant to this Agreement, such corporation to be operated and to act in accordance with this Agreement.

“Costs” means assessed costs, agreed upon costs or DRM or IAP costs, payable to a Claimant in an IRS Abuse Claim.

“Dispute Resolution Model” or “DRM” means the out of court process for the resolution of IRS Abuse Claims announced by the Minister Responsible for Indian Residential Schools Canada on November 6, 2003, as amended from time to time.

“Government” means the Government of Canada.

“Independent Assessment Process” or “IAP” means the process for validating and providing compensation for certain proven abuse claims as set out in Schedule D to the Agreement in Principle, as modified by the Approval Orders or thereafter in accordance with a procedure approved by those judgments.

“IAP Claim” means a claim resolved through the IAP established by the Approval Orders.

“Indian Residential School” or “IRS” means one or more of the Indian Residential Schools set out in Schedule E or F to the Indian Residential Schools Settlement Agreement, and any other school added to such list pursuant to the process set out in the aforesaid Settlement Agreement at which any of the Catholic Entities had a presence or was otherwise associated with such school, or within whose territorial jurisdiction such school operated.

“Indian Residential Schools Settlement Agreement” or “IRSSA” means the Settlement Agreement dated • , 2006, (made between Canada, certain Plaintiffs, as represented by the National Consortium, the Merchant Law Group and independent counsel; the AFN; Inuit representatives, and the Church

Organizations as defined in the IRSSA) as approved by the Approval Orders.

“In-Kind Services” includes In-Kind Services, contributions, commitments or programs as the context may require.

“IRS Abuse Claim” means a continuing claim as defined for the IAP, or outside of the IAP, means a claim for Compensation for the mistreatment or neglect of a child arising from, or connected to, the operation of an Indian Residential School, other than a claim arising from the alleged loss or diminution of aboriginal language or culture (which is a continuing claim as defined for the IAP) that is founded on:

one or more intentional torts such as physical or sexual assault, forcible confinement or the intentional infliction of mental suffering where the Government or a Catholic Entity has or accepts vicarious liability;

negligence or breach of fiduciary duty where the Government or a Catholic Entity has or accepts any part of the legal responsibility;

any other head of liability recognized by the courts as of the date this Agreement comes into force, where the Government or a Catholic Entity has or accepts any part of the legal responsibility.

“Other Catholic Entity” means:

a) one or more of the Jesuit Fathers of Upper Canada, the Roman Catholic Episcopal Corporation for the Diocese of Sault Ste. Marie in Ontario Canada, or the Daughters of Mary, all of whom are not parties to this Agreement but are parties to an agreement with the Government dated May 10, 2004 that provides, *inter alia*, for the payment of Compensation, which payments have been paid in full; or

b) the Episcopal Corporation of Saskatoon, which is a party to this Agreement but did not have an IRS located within its territorial boundaries, nor did it provide staff to work in an IRS.

“Other Released Claim” means any claim deemed to have been released pursuant to the Approval Orders.

“Validated Claim” means an IRS Abuse Claim that has been found to be proven:

by a final decision of a DRM, the IAP, or a court; or

as a result of an assessment conducted by counsel for the Government in accordance with this Agreement, including the principles set out in

## Section 2.9.

and "Validation" means any of the above methods used to decide if an IRS Abuse Claim is a Validated Claim.

1.2 For greater certainty, for purposes of this Agreement the definitions in this Agreement prevail over those used in the IRSSA. Where a word or term is capitalized in this Agreement and not herein defined then the definition in the IRSSA applies unless the context requires otherwise.

1.3 The following Schedules are appended to this Agreement and are incorporated into and form part of this Agreement by this reference as fully as if contained in the body of this Agreement:

Schedule A, List of the Catholic Entities;

Schedule B, The Catholic Healing, Reconciliation and Service Evaluation Committee;

Schedule C, Conditions Under Which Payments are Made From the Corporation to the Aboriginal Healing Foundation ("AHF");

Schedule D, Full and Final Release in Claims by Persons who Opt Out of the IRSSA;

Schedule E, Process for Providing Documents to the Truth And Reconciliation Commission;

Schedule F, Sections of IRSSA incorporated by Reference; and

Schedule G, Name and Address of the Catholic Entities for Giving Notice.

## **PART 1A COMING INTO FORCE**

1A.1 This Agreement comes into force and will become effective and binding on the parties on the Implementation Date (see Article 1.01 of the IRSSA). For greater certainty, if the IRSSA does not become effective and binding, then this Agreement has no force and effect.

## **PART II DEFENCE AND RESOLUTION OF IRS ABUSE CLAIMS**

2.1 As long as there is a prospect of settling a claim solely on the basis of the allegations which fall within the definition of an IRS Abuse Claim, it is to be treated as such for the

purposes of this Agreement notwithstanding the fact that claims arising from alleged loss or diminution of aboriginal language or culture or other claims falling outside the definition are also being made.

2.2 In this Part, a reference to one or more Catholic Entities means only those Catholic Entities which were associated with the IRS from which a claim arises, or within whose territorial jurisdiction the IRS is or ever was located and is a party to this Agreement.

2.3 It is the Government's intention to defend or resolve all IRS Abuse Claims in which it is a named party. For claims based on intentional torts arising prior to May 14, 1953 the Government will assert immunity if the matter proceeds to trial and will play no role in the defence after a court finds such immunity. The Government will provide written notice of its intention to each Catholic Entity which is a party to these claims not later than 120 days before the start of such trial, and such Catholic Entity will defend the claims or otherwise settle them.

2.3.1 The Government agrees to wholly indemnify the Catholic Entity for all Compensation paid to a Claimant pursuant to this Section or Section 4.2.; and

2.3.2 The Government will further indemnify the Catholic Entity for legal fees and expenses incurred by the Catholic Entity in defending an IRS Abuse Claim based on an intentional tort arising prior to May 14, 1953 for the period of time from and after a court has dismissed the claim against the Government based on Crown immunity to the date of resolution of the claim. The indemnification will be in an amount as agreed between the Government and the Catholic Entity, or as determined in accordance with Part V hereof. In the event of resort to Part V the parties and any Mediator appointed under Section 5.6 shall have regard to the rules, principles and caselaw that would apply in the taxation of a solicitor and own client account in the province or territory where the claim was brought.

2.4 Each Catholic Entity will cooperate in the defence or resolution of all IRS Abuse Claims against it, whether advanced within or outside the IAP, and may elect to participate at its own expense in the defence of any claim, or certain aspects of it, subject to any applicable rules and procedures. In the case of a claim being resolved through the IAP, the Entities' rights to participate and obligations are as set out therein.

2.5 The Government agrees to co-operate with each Catholic Entity to minimize the circumstances in which the Claimant pursues independent causes of action or theories of liability against each Catholic Entity in an IRS Abuse Claim.

2.6 The Government, where requested by a Catholic Entity, shall provide disclosure of and production of relevant files and documents to counsel for that Catholic Entity and its researchers and/or experts, excepting files and documents with respect to which solicitor-client privilege or other lawful privilege applies and is asserted and subject to privacy concerns and legislation. Any information obtained from records pursuant to this Section

will be used exclusively for the DRM or IAP processes or for the defence of the IRS Abuse Claim for which the information was sought unless otherwise agreed in writing.

2.7 The Government, the Corporation and each Catholic Entity agree that instructions given to their respective counsel will be consistent with the terms and intent of this Agreement, and further accept and acknowledge that their respective representatives and counsel are instructed by, act for, and represent only their principal.

2.8 The Government and each Catholic Entity will within 60 days of the coming into force of this Agreement withdraw any third party claim or cross claim against each other in IRS Abuse Claims on a reciprocal, without costs basis, other than in a proceeding which includes allegations beyond IRS Abuse Claims, and will refrain from issuing such claims in the proceeding which includes allegations beyond IRS Abuse Claims.

2.9 The provisions of Appendices III and IV of the IAP apply to the collection and submission of documents and to the participation and evidence of an alleged perpetrator in IAP.

2.9A Each Catholic Entity will, upon request by the Government, provide the Government with access to any documents in the possession of the Catholic Entity that could assist with validation of applications for the Common Experience Payment (CEP) as that term is defined in the IRSSA, all at the expense of the Government.

2.10 In litigation, and subject to Appendices III and IV of the IAP, in IAP, where a Catholic Entity elects not to participate in the validation, resolution or defence of IRS Abuse Claims in litigation and, in IAP to the extent that the following provisions apply, the Catholic Entity will at its own expense:

2.10.1 Comply with all reasonable requests from the Government for information during the proceedings;

2.10.2 Provide counsel for the Government and its researchers and/or experts with full access to all relevant files and databases, excepting documents with respect to which solicitor-client privilege or other lawful privilege applies and is asserted. Any information obtained from records pursuant to this section will be used exclusively for the DRM or IAP processes or for the defence of the IRS Abuse Claim, for which the information was sought unless otherwise agreed in writing;

2.10.3 Participate, through a representative, to the extent consistent with its values and traditions in any apologies, reconciliation or closure ceremonies that are agreed to as part of the resolution of an IRS Abuse Claim and, provided the terms of this Agreement have been followed, support the result achieved as if they had been represented by counsel and had defended the Claim. For greater certainty, the Catholic Entity will pay for its own expenses for attendance and participation but not for the ceremony itself;

2.10.4 Provide disclosure and production of relevant documents in its possession or control, and provide witness statements on request;

2.10.5 Attend, as appropriate, at the discovery of their witnesses, and otherwise facilitate the testimony of witnesses within its employ; and

2.10.6 Accommodate a Claimant's reasonable request that a representative of the Catholic Entities attend a hearing while a Claimant is giving evidence or otherwise relating his or her experience at an IRS.

2.11 In IAP, where a Catholic Entity elects not to participate in the validation, resolution or defence of IRS Abuse Claims and subject to Appendix III of the IAP, the Government will:

2.11.1 Provided a witness statement is submitted in advance, or the individual provides a full interview to the Government, the Government will pay the reasonable travel and accommodation costs of a member, employee or former employee of a Catholic Entity to appear at a DRM or an IAP hearing. In other proceedings involving IRS Abuse Claims, the Government will only be responsible for any expense related to the participation of the member, employee or former employee of a Catholic Entity where the Government requires the participation of such member, employee or former employee; and

2.11.2 The Government will participate in and may conclude negotiations to determine the amount of Compensation in any settlement.

2.12 Each Catholic Entity will provide documents to the Truth and Reconciliation Commission in accordance with Schedule "E".

2.13 IRS Abuse Claims brought outside the IAP will be settled only where the standard of proof utilized by the courts for matters of like seriousness has been met. Settlement offers will be based on evidentiary considerations and legal principles. IAP Claims shall be settled in accordance with its terms and conditions.

2.13.1 Where a Catholic Entity advises the Government in writing that it wishes to be consulted before the Government settles an IAP claim without holding a hearing, the Government will consult with the Catholic Entity provided that within two weeks of notification the Catholic Entity commits to a reasonable timetable and process for consultation.

2.14 Where a trial is held in a matter arising under the IAP, neither the Government nor a Catholic Entity will rely upon the defence of limitations or the doctrine of laches or other defence not going to the merits. This section does not apply to claims by a plaintiff who has opted out of the IRSSA.

2.14.1 Where an opt-out claim can be settled, the Government and the affected Catholic Entity agree that it will be resolved without regard to possible defences which do not go to the merits, such as limitations or laches. Should such a claim proceed to trial, Crown immunity, where applicable, will be asserted by the Government, and the Catholic Entity will be free to determine the defences it will assert.

2.15 Where a Catholic Entity makes a request in writing the Government will, in a timely manner, provide the Catholic Entity, or its designated representative, with copies of IRS Statements of Claim served on the Government, and copies of Notices of Examinations it serves on IRS Claimants, in order to facilitate informed decisions about potential participation by that Catholic Entity.

2.16 Where IRS Abuse Claims are being advanced in litigation, the Government and the Catholic Entities will each notify the other of any settlement overtures from claimants.

2.17 Where a Catholic Entity receives from the IAP Secretariat a copy of Claimant's IAP application or receives from the Government a copy of an application to the DRM, the Catholic Entity agrees to be bound by trust conditions imposed on it with respect to confidentiality or, if it does not so agree in one or more instances, to return the document(s) without copying, reading or making use of it in any way.

2.18 Releases by Class Members, Cloud Class Members and Non-resident Claimants are as provided for in the IRSSA, specifically Articles 4.06, 11.01, 11.02 and Schedule P, and the Approval Orders. As part of any resolution of a claim brought by any person not bound by the IRSSA arising out of or in relation to an Indian Residential School or the operation generally of Indian Residential Schools, the Government will concurrently secure from the claimant a dismissal of the claim and release for itself and the affected Catholic Entity from any and all past, present and future claims, whether or not now known to or existing at law, arising from or connected to, directly or indirectly, an Indian Residential School.

2.18.1 The release by a person not bound by the IRSSA shall be in the form attached as Schedule D.

2.19 Each Catholic Entity, the Corporation and Canada agree that they will bring no action or claim whatsoever against the other or its counsel related in any way to the validation, resolution or defence of any DRM, IAP or opt-out claim, and agree that this section shall operate as a full and complete defence to any such claim and that each of them shall be barred from recovering as against the other any and all amounts claimed by way of damages, interest, costs or expenses in any way related to such claims. The parties further agree to indemnify each other for any and all costs, expenses and damages suffered by each of them as a result of such action or claim being brought against the other or its counsel by them.

2.20 Section 2.19 does not operate to prevent the Government, the Corporation or a Catholic Entity from taking an action to enforce the provisions of this Agreement.

### **PART III: HEALING AND RECONCILIATION AND FINANCIAL COMMITMENTS**

3.1 The Catholic Entities will establish a not for profit corporation for healing and reconciliation for the exclusive purpose of implementing and carrying out the financial and In-Kind Services provided for in this Agreement and, subject to approval by the Government of its articles of incorporation, will have established the Corporation before the execution of this Agreement. The Corporation shall provide the Government with its constating documents and bylaws upon incorporation, and as amended from time to time, and with financial statements on its operations no later than 120 days following the end of each fiscal year until the financial and service commitments provided for by this Agreement and the Settlement Agreement are fulfilled.

3.1.1 The Government shall have the right to review and approve the articles of incorporation of the Corporation prior to incorporation.

3.2 The Corporation shall maintain segregated funds, accounts and records for each of the below listed \$29,000,000 cash contribution, \$25,000,000 In-Kind Services, and the funds raised in the Canada-wide fund raising campaign.

3.3 Each Catholic Entity and the Episcopal Corporation of Saskatoon agrees to pay or transfer to the Corporation for use in accordance with this Agreement the amount of money specified in a confidential list provided to the Deputy Minister, IRSRC. The list shall include amounts and a payment schedule for each Entity ("the Payment List"). The total of such individual commitments shall be \$29,000,000, less the aggregate amount paid by one or more of the Catholic Entities or Other Catholic Entity for IRS Abuse Claim Compensation as of the date this Agreement comes into force (the "Net Amount").

3.3.1 Within 60 days of this Agreement coming into force the Government and each Catholic Entity and Other Catholic Entity shall agree upon the amount that has been paid by the latter for IRS Abuse Claims. The amount remaining payable by each Catholic Entity as set out in the Payment List shall be secured by a promissory note and consent to judgment by that Catholic Entity in favour of the Corporation. The aggregate amount of all promissory notes and consents to judgment shall be the Net Amount. The promissory notes and consents to judgment shall be held by the Corporation in trust to be used only in the event of default, and then only as against an Entity in default.

3.3.2 Each Catholic Entity shall pay its share of the Net Amount as shown on the Payment List within a five year period commencing the day following the coming



into force of this Agreement or such earlier date as may be agreed to by the parties. In no case shall the annual contribution to the Corporation by any Catholic Entity be less than 20% of that Entity's share of the net amount. The annual instalment shall be paid by each entity to the Corporation no later than March 31<sup>st</sup> of the year in which it is due. All payments are subject to verification and audit by a duly qualified person appointed by the Government.

3.4 The Corporation shall pay monies deposited with it pursuant to section 3.3 to the Aboriginal Healing Foundation ("AHF") in accordance with Schedule C or in accordance with Schedule B under the exception set out in section 4 of Schedule C.

3.5 Each Catholic Entity and the Episcopal Corporation of Saskatoon shall provide In-Kind Services as set forth in a confidential list ("the In-Kind Services List"), such list to be provided by the Corporation to the Deputy Minister, IRSRC.

3.5.1 The List shall include the value and a delivery schedule for each Entity. The total of the In-Kind Services by the Catholic Entities in the aggregate shall be \$25,000,000 contributed over ten years toward healing and reconciliation for former IRS students, and their families and communities.

3.6 The determination of qualifying In-Kind Services shall be made in accordance with Schedule B. Subject to the exception set out in Schedule B, section 11, the ten year period will commence the day following the coming into force of this Agreement. A minimum of \$2,500,000 In-Kind Services shall be made each year for the ten year period or until the In-Kind Services contributions total \$25,000,000, whichever comes earlier.

3.6.1 No Catholic Entity shall be liable for more than its scheduled value of In-Kind Services as set out in the In-Kind Services List. In-Kind Services are subject to verification of delivery and compliance with Schedule B and audit.

3.7 Each Catholic Entity shall provide a promissory note and consent to judgment to the Corporation to secure the amount of its In-Kind Services. The promissory notes and consents to judgment shall be held by the Corporation in trust to be used only in the event of default, and then only as against the defaulting entity.

3.8 The Government is entitled to receive from the Corporation and the Catholic Entities on an annual basis information sufficient to enable the Government to verify performance of the obligations contained in sections 3.3 and 3.5 of this Agreement.

3.8.1 Canada may provide the other Church Organizations with the total amounts determined under 3.3.2 and 3.6 of the Agreement annually so they can determine their own proportionate financial obligations under their respective agreements with the Government.

3.9 Each Catholic Entity and the Corporation further agree to use their best efforts

throughout the seven year period following the day after the coming into force of this Agreement to raise \$25,000,000 through a Canada-Wide campaign to be established by the Corporation for healing and reconciliation for former IRS students and their families and communities. The funds to be raised through the Canada-Wide campaign, net of reasonable and necessary administration costs to raise the funds, shall be paid to the Corporation on an annual basis and awarded as grants in accordance with Schedule B.

3.9.1 Best efforts shall be deemed to have been made where the fund-raising campaign demonstrates on a Canada-Wide level in each of the seven years an approach and means that is consistent with the approach and means used by professionally managed national fundraising campaigns, including those operated by universities and hospital foundations.

3.9.2 Each Catholic Entity shall cooperate with the other Catholic Entities and the Corporation with a view to causing the Corporation to perform its obligations under Section 3.9.

3.9.3 No Entity shall be held in default of its obligation as to best efforts or to cooperate in the campaign where, having regard to the campaign as a whole, best efforts have been made.

3.9.4 For greater certainty, not raising \$25,000,000 shall not, in itself, be a condition of default.

3.10 The Government is entitled to receive from the Catholic Entities and the Corporation on an annual basis information sufficient to enable the Government to verify that best efforts have been made and the amount of monies raised through the Canada-Wide campaign.

3.10.1 Canada may provide the other Church Organizations with the total amounts raised annually through the Canada-Wide campaign so they can determine their own proportionate financial obligations under their respective agreements with the Government.

3.11 Prior to the coming into force of this Agreement each Catholic Entity shall provide a statutory declaration of a duly authorized officer to satisfy the Government in accordance with accepted standards that it has the ability to meet its obligations under this Agreement.

3.12 So long as contributions made under section 3.3 to the Corporation are kept current as required by this Agreement, interest accruing on the funds held by the Corporation shall be used by the Corporation, first, for the payment of reasonable administration costs of the Corporation, and thereafter in accordance with Schedule B. The interest on any instalment paid to the Corporation before the due date shall be credited to the entity making the payment for the period of time from the date of payment to the due date.

3.12.1 Should the reasonable administration costs exceed the amount of interest on the funds on an annual basis, then the reasonable administration costs of operating the Corporation may, with the consent in writing of the Government be paid from the capital amount held by the Corporation. The Government may not unreasonably withhold the consent referred to in this Section.

3.13 The occurrence of any of the following events or conditions will be a default by a Catholic Entity:

3.13.1 Failure to fulfill its obligations under Sections 3.3, the first paragraph of 3.5, 3.7 and 3.11 where the default remains outstanding for more than 60 days;

3.13.2 Failure to fulfil its obligations under section 3.9;

3.13.3 Amalgamation with another entity on terms which do not provide that the amalgamated entity assumes the liabilities and obligations of the amalgamating body under this Agreement, the Settlement Agreement and Approval Orders, or becomes insolvent or bankrupt or makes a proposal or files an assignment for the benefit of creditors under the *Bankruptcy and Insolvency Act* or similar legislation in Canada or any other jurisdiction, or ceases doing business, or winds up, unless prior to such amalgamation, insolvency, bankruptcy, winding up, or assignment another Catholic Entity that is solvent and with sufficient funds to satisfy the obligations of the first entity assumes the obligations of such entity under this Agreement.

3.14 In the event of default by a Catholic Entity as defined in Section 3.13, the Corporation shall notify the Government in writing and the Corporation shall take such steps as are reasonable to cause the default by the Catholic Entity to be remedied.

3.15 In addition, with respect to a default under section 3.13.1, the Corporation and Government, as applicable, will have the following rights:

3.15.1 The Corporation is entitled to make such use of a defaulting Entity's promissory note and consent to judgment as it sees fit in order to realize on the amount(s) outstanding from the defaulting Entity, including the right to use, sue, file or register, and execute on the promissory note and consent to judgment;

3.15.2 The Government, in its sole discretion, may require the Corporation to deliver to it the defaulting Catholic Entity's promissory note and consent to judgment and, in such event may make such use of the promissory note and consent to judgment as it sees fit in order to realize on the amount outstanding from the defaulting Entity, including the right to use, sue, file or register, and execute on the promissory note and consent to judgment;

3.15.3 The Government, in its sole discretion, may require the Corporation to take all necessary steps to recover against a defaulting Entity on its promissory note and consent to judgment;

3.15.4 All proceeds recovered pursuant to Sections 3.15.1, 3.15.2, or 3.15.3 shall be applied, firstly, to pay the reasonable expenses related the use, suit, filing or registering or execution on the promissory note and consent to judgment and, secondly, to discharge or satisfy the obligations of the defaulting Entity under this Agreement.

3.16 The occurrence of any of the following events or conditions will be a default by the Corporation:

3.16.1 Breach of its obligations set out in Sections 3.2, 3.4, 3.7, 3.15.2 or 3.15.3 of this Agreement;

3.16.2 Failure to fulfil its obligations under section 3.9; and

3.16.3 Amalgamation with another entity on terms which do not provide that the amalgamated entity assumes the liabilities and obligations of the Corporation under this Agreement, the Settlement Agreement and Class Action Judgments, or becoming insolvent or bankrupt or making a proposal or filing an assignment for the benefit of creditors under the *Bankruptcy and Insolvency Act* or similar legislation in Canada or any other jurisdiction, or ceasing doing business or winding up, unless prior to such amalgamation, insolvency, bankruptcy, winding up, or assignment another corporation that is solvent with sufficient funds to satisfy the obligations of the Corporation assumes the obligations of the Corporation under this Agreement.

3.17 In the event of default by the Corporation, in addition to any other remedies the Government may have by law, the Government may:

3.17.1 Pursue remedies under Part V in an expedited way, and failing resolution under Part V make a summary application to court for a remedial order; or

3.17.2 Appoint a receiver over the Corporation.

3.18 If the provisions of Section 3.3, or 3.5 to 3.7 are not fully complied with, and the Government has taken reasonable steps against a defaulting Entity to execute on the promissory note and consent to judgment as against such Entity and obligations of that Entity remain outstanding, then in addition to any other rights or remedies to which the Government may be entitled by law, or by this Agreement, the Government may declare this Agreement, or, at its sole discretion, any portion thereof, to be void as to the defaulting Catholic Entity by notice in writing to all Catholic Entities and the Corporation or the Government may thereafter apply to court for an order removing the

defaulting Catholic Entity in from the deemed releases which arise under the IRSSA. In such case the defaulting Catholic Entity agrees to consent to judgment.

3.19 Notwithstanding Section 3.17.1, where a dispute arises as to whether the obligations of a Catholic Entity or the Corporation set out under Section 3.9 of this Agreement have been met, in addition to remedies under Part V of this Agreement, the Government may at any time refer the matter to the appropriate court on a summary basis. Where the court finds that the Catholic Entity or the Corporation has failed to meet its obligations under Section 3.9, the Government shall consider reasonable proposals from the defaulting Catholic Entity or Corporation, as the case may be, to remedy the default. Remedies may include additional fundraising efforts, In-Kind Services or additional cash. In addition:

3.19.1 Where the Government and a defaulting Catholic Entity do not agree on a remedy, the Government may declare this Agreement or, at its sole discretion, any portion thereof to be void as to the defaulting Catholic Entity by notice in writing to all Catholic Entities and the Corporation or the Government may thereafter apply to court for an order removing the defaulting Catholic Entity from the deemed releases which arise under the IRSSA. In such case, the defaulting Catholic Entity agrees to consent to judgment.

3.20 The Sections and Schedules of the Indian Residential Schools Settlement Agreement listed below and reproduced in Schedule F hereto are incorporated into and form part of this Agreement by this reference as fully as if contained in the body of this Agreement. The Sections and Schedules of the Settlement Agreement incorporated by reference are: selected Definitions in 1.01, 4.01, 4.05, 4.06, 7.01(2), 7.01(3), 11.01, 11.02, 11.03, 13.02, 13.03, 13.10, 13.11, 15.01(3), Schedule D Appendices II page 19 (iii) (iv), III page 21 (i), IV page 23 (i) (vii), X pages 39 to 42, XI pages 43 and 44, Schedule N Article 10A(k), 10B(c)(f), 10D, and Part 14 paragraph 3, Schedule P, all plus definitions from Section 1.01 of the IRSSA such as are necessary to give meaning and effect to the foregoing IRSSA Sections and Schedules.

#### **PART IV**

#### **APPORTIONMENT AND PAYMENT OF COMPENSATION**

4.1 Where an IRS Abuse Claim is resolved after the coming into force of this Agreement, the Government will pay in full all Compensation payable for such claim, and the Catholic Entities shall bear no responsibility to pay any part of such Compensation.

4.1.1 For greater certainty, it is agreed that all Compensation for IRS Abuse Claims paid by a Catholic Entity as of the coming into force of this Agreement shall remain undisturbed, and credited in accordance with Section 3.3.1.

4.2 Notwithstanding Section 4.1, where all or part of the Compensation awarded at a trial for an IRS Abuse Claim relates only to an intentional tort committed prior to May 14, 1953 for which the Crown is immune, any Catholic Entity against whom judgment is

rendered shall pay 100% of the Compensation that relates to such intentional tort, and Section 4.1 shall apply only to the balance of such Compensation, if any. The provisions of Sections 2.3 and 4.7 shall apply to the amount of Compensation paid by a Catholic Entity under this clause so as to indemnify the Catholic Entity in a timely way.

4.3 Following the coming into force of this Agreement, the Government will, at the request of a Claimant whose IRS abuse claim was settled by the Government without contribution from a Catholic Entity which is a party to such claim and is a party to the Approval Orders, such settlement having been for an amount representing a fixed reduction from the assessed Compensation, offer to pay the balance of the assessed Compensation to the Claimant. Provided, however, that no amount shall be paid to a Claimant pursuant to this section until the Claimant agrees to accept such amount in full and final satisfaction of his or her claim against the Catholic Entity and the Government, and to release them.

4.4 The liability of a Catholic Entity for all Compensation for IRS Abuse Claims is discharged by full compliance of its obligations under this Agreement, and that thereafter the Government will not require further monies be paid or In-Kind Services be provided by such Catholic Entity.

4.4.1 The Episcopal Corporation of Saskatoon, which did not have an IRS located within its territorial boundaries nor did it provide staff to work in an IRS, is a party to this Agreement for purposes of contributing cash and providing In-Kind Services (in accordance with Sections 3.3 and 3.5 to 3.8, 3.11 and Schedule B hereof) and for complying with the requirements as to documents and witnesses and participation in ceremonies (in accordance with Sections 2.10 and 2.12 hereof). The liability of the Episcopal Corporation of Saskatoon for all Compensation for IRS Abuse Claims is discharged by full compliance of its obligations under this Agreement, and thereafter the Government will not require further monies be paid or In-Kind Services be provided by the Episcopal Corporation of Saskatoon.

4.4A The Jesuit Fathers of Upper Canada, the Roman Catholic Episcopal Corporation for the Diocese of Sault Ste. Marie in Ontario Canada, and the Daughters of Mary, being Other Catholic Entities with an existing agreement with the Government that provides for the payment of Compensation (which is paid up) and who are not parties to this Agreement, shall not receive any benefit or incur obligations pursuant to or arising from this Agreement.

4.5 In the event that the terms of this Agreement are fully complied with then notwithstanding anything to the contrary herein or elsewhere contained, the Government will release and forever discharge each Catholic Entity from any and all causes of action, claims or demands for damages for IRS Abuse Claims or claims included in the Approval Orders. In such event the Government will also agree not to make any claims or demands or commence, maintain or prosecute any action, cause or proceeding for damages,

compensation, loss or any other relief whatsoever against any Catholic Entity arising directly or indirectly from any IRS Abuse Claim or other claims included in the IRSSA.

4.6 So long as a Catholic Entity is complying with its obligations under this Agreement, the Government agrees to indemnify and save harmless such Catholic Entity from any and all claims for Compensation payable to a Claimant in an IRS Abuse Claim. If a Catholic Entity is not complying with its obligations under this Agreement, then the Government will not indemnify and save harmless such Catholic Entity for the period of time it is not in compliance.

4.7 Where the Corporation certifies that a Catholic Entity has fully complied with its obligations under Sections 3.3 and 3.5 of this Agreement, and where best efforts have been made to date and the Canada-Wide campaign is successful having regard to other professionally managed national fundraising campaigns, and the Catholic Entity commits to continue its best efforts in the Canada-Wide campaign, the Government shall release and forever discharge that Catholic Entity from any and all causes of actions, claims or demand for damages for IRS Abuse Claims or claims included in the Approval Orders and shall not make any claim or demand or commence, maintain or prosecute any other cause or proceeding for Compensation made against that Catholic Entity in an IRS Abuse Claim.

## **PART V RESOLUTION OF DISPUTES CONCERNING THIS AGREEMENT**

5.1 The parties to this Agreement share the following objectives in the implementation of the Agreement, namely to:

5.1.1 co-operate with each other to develop harmonious working relationships;

5.1.2 prevent, or, alternatively, to minimize disagreements;

5.1.3 identify disagreements quickly and resolve them in the most expeditious and cost-effective manner; and

5.1.4 resolve disagreements in a non-adversarial, collaborative and informal atmosphere.

5.2 If any dispute arises out of, or has arisen relating to this Agreement, or the breach, validity or interpretation or subject matter thereof, the disputing parties will diligently endeavour to settle the dispute through good faith negotiations.

5.2.1 Section 5.2 does not abrogate the rights set out in Sections 3.15, 3.17, 3.18 and 3.19 nor the right to seek specific performance as set out in Section 5.7.



5.3 If the disputing parties resolve some, but not all issues in dispute during the course of, or as a result of the negotiations, their rights with respect to the remaining unresolved issues shall remain unaffected by the negotiations in any subsequent proceeding.

5.4 Within sixty (60) days of the execution date of this Agreement the Government and the Catholic Entities collectively, shall each appoint one person as their Nominee to an Implementation Steering Committee, for the purpose of overseeing the administration and interpretation of the provisions of this Agreement and shall provide in writing the name of their Nominee to the other. For the purposes of this Part the Government shall be entitled to one Nominee and the Catholic Entities collectively shall be entitled to one Nominee.

5.5 The two Nominees constituting the Implementation Steering Committee shall meet in the Province of Alberta, or otherwise in Canada as agreed, at least once each calendar year during the currency of this Agreement. The purpose of each meeting will be to review performance under this Agreement, and to resolve by consensus all disputes that arise or have arisen in the interpretation and implementation of this Agreement. The minutes of such meetings shall be signed by each Nominee at the conclusion of the meeting and filed with the Government, the Corporation and the Catholic Entities.

5.6 If the disputing parties are unable to resolve a dispute through negotiations within 120 days, either may request the commencement of mediation to resolve the dispute. The Mediator would be a third party neutral, who has no authority to resolve the dispute, but would facilitate resolution.

5.6.1 The mediation will be conducted by one Mediator jointly agreed upon by the Government and the disputing Catholic Entities.

5.6.2 The disputing parties will make a serious attempt to resolve the dispute through mediation by:

5.6.2.1 identifying underlying interests;

5.6.2.2 isolating points of agreement and disagreement;

5.6.2.3 exploring alternative solutions;

5.6.2.4 considering compromises or accommodations; and

5.6.2.5 co-operating fully with the mediator and giving prompt attention to, and responding to all communications from the mediator.

5.6.3 A party to the mediation may withdraw from mediation at any time by giving at least 21 days written notice of its intention to the other and the Mediator.



5.7 Notwithstanding Section 5.6, the Government may by notice in writing request that the Corporation or a Catholic Entity comply with a commitment made in this Agreement.

5.7.1 Where the Government has delivered a written request to the Corporation or Catholic Entity in accordance with this Agreement to have the recipient comply with such request within 60 days and the request has not been complied with, the Government may apply by way of summary application to a court of competent jurisdiction where the Corporation or Catholic Entity is located for a mandatory order that they immediately comply with their obligation.

5.7.2 The Corporation or Catholic Entity may file responding materials to the summary application and the rules of the court having jurisdiction will thereafter determine the process to be followed in determining the summary application.

5.7.3 If the court hearing the summary application finds that the Corporation or Catholic Entity have failed to comply with their obligations under this Agreement the court may order that they immediately comply with such obligations.

## **PART VI: GENERAL**

6.1 Notice shall be given, save as otherwise specifically provided, in writing addressed to the party for whom it is intended and shall be deemed received by the other party on the day it is signed for if sent by certified mail, and if sent by facsimile or email, it shall be deemed received on the business day next following the date of transmission. The mailing, facsimile and email addresses of the parties shall be:

As to the Catholic Entities:

See Schedule G to this Agreement

As to the Episcopal Corporation of Saskatoon:

100 5<sup>th</sup> Avenue North  
Saskatoon SK S7K 2N7

Attention: ●  
Fax: ●

Copy to:

David Stack  
McKercher McKercher & Whitmore LLP  
374 Third Avenue South

Saskatoon SK S7K 0G6  
Fax: (306) 653-2669 (fax)  
E-mail: d.stack@mckercher.ca

As to the Corporation:

•

Attention: Chair of the Board  
Fax: •

Copy to:

W. Rod Donlevy  
374 Third Avenue South  
Saskatoon, Saskatchewan  
S7K 1M5  
Fax : (306) 653-2669  
Email: r.donlevy@mckercher.ca

Pierre-L. Baribeau  
1 Place Ville Marie  
Suite 4000  
Montréal, Quebec  
H3B 4M4  
Fax : (514) 871-8977  
Email : pbaribea@lavery.qc.ca

As to the Government:

Deputy Head,  
Office of Indian Residential Schools Resolution Canada,  
3<sup>rd</sup> floor, 90 Sparks Street  
Ottawa, Ontario, K1A 0H4

Fax: 613 996 2811

Copy to:

Department of Justice Legal Services,  
5<sup>th</sup> floor, 90 Sparks Street

Ottawa, Ontario, K1A 0H4

Attention: Senior Counsel  
Fax: 613 996 1810

Copy to:

Deputy Attorney General of Canada,  
Department of Justice Building  
284 Wellington Street  
Ottawa, Ontario, K1A 0H8

Attention: Assistant Deputy Attorney General, Aboriginal Law  
Fax: 613 996 4737

or any other mailing, facsimile addresses or email addresses as the Parties from time to time may notify each other of in writing.

6.2 This Agreement shall be binding on and enure to the benefit of each Catholic Entity, the Corporation and their successors and assigns and the Government.

6.3 Any provision of this Agreement which is or becomes prohibited or unenforceable in any jurisdiction that governs the interpretation, applicability or enforceability of this Agreement shall not invalidate or impair the remaining provisions of this Agreement which shall be deemed severable from the prohibited or unenforceable provision and any prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable that provision in any other jurisdiction.

6.4 No amendment, supplement or waiver of any provision of this Agreement or any other agreements provided for or contemplated by this Agreement, nor any consent to any departure by a party to this Agreement or their representative shall in any event be effective unless it is in writing and signed by the Parties to this Agreement and then the amendment, supplement, waiver or consent shall be effective only in the specific instance for the specific purpose for which it has been given.

6.5 No waiver or act or omission of a party to this Agreement shall extend to or be taken in any manner whatsoever to affect any subsequent event of default or breach by that party of any provision of this Agreement or the results or the rights resulting from it.

6.6 Time shall be of the essence in this Agreement.

6.7 No Member of the House of Commons or Senate may participate in or derive a benefit through this Agreement other than as a member or officer of the Corporation, a Catholic Entity or as a Claimant.

6.8 This Agreement constitutes the entire Agreement among the parties and cancels and supersedes any prior agreements, undertakings, declarations or representations, written or verbal in respect of them, except as follows:

6.8.1 The provisions in the Agreements between the Government and the Catholic entities listed in Schedule A which were in force as of the date this Agreement comes into force continue in effect for the purpose of determining rights and obligations in DRM proceedings, but not as to any financial matters.

6.9 This Agreement shall be interpreted in accordance with the laws in force in the Province of Ontario, subject always to any paramount or applicable federal laws. Nothing in this Agreement is intended to or is to be construed as limiting, waiving or derogating from any federal Crown prerogative.

6.10 The Government, the Catholic Entities and the Corporation acknowledge that the participation in the negotiations leading to the execution of this Agreement, and the execution of this Agreement, does not constitute any admission by the Government, the Catholic Entities or the Corporation that they have any legal or financial liability to any party in relation to claims arising from or connected to the operation of an IRS. The Government, the Catholic Entities and the Corporation agree that they will not advance as evidence or argument in any legal claim against each other in relation to claims arising from or connected to the operation of an IRS, the negotiations leading to and the execution of this Agreement.

6.11 This Agreement may be signed in counterparts.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their respective officers duly authorized as of the date stated above.

**EXECUTED** in the presence of:

\_\_\_\_\_  
As to Sisters of Charity, a body corporate also  
known as Sisters of Charity of St. Vincent de  
Paul, Halifax also known as Sisters of Charity  
of Halifax's authorized signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

) AS TO SISTERS OF CHARITY, A BODY  
) CORPORATE ALSO KNOWN AS SISTERS  
) OF CHARITY OF ST. VINCENT DE PAUL,  
) HALIFAX ALSO KNOWN AS SISTERS OF  
) CHARITY OF HALIFAX  
)  
)  
)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(name of person signing)

\_\_\_\_\_  
(title)

) I have the authority to bind the corporate entity  
)  
)

**EXECUTED** in the presence of:

\_\_\_\_\_  
As to The Roman Catholic Episcopal  
Corporation of Halifax's authorized signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

) THE ROMAN CATHOLIC EPISCOPAL  
) CORPORATION OF HALIFAX  
)  
)  
)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(name of person signing)

\_\_\_\_\_  
(title)

) I have the authority to bind the corporate entity  
)  
)

**EXECUTED** in the presence of:

\_\_\_\_\_  
As to Les Soeurs De Notre Dame-  
Auxiliatrice's authorized signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

) LES SOEURS DE NOTRE DAME-  
) AUXILIATRICE  
)

) \_\_\_\_\_  
) *(signature)*

) \_\_\_\_\_  
) *(name of person signing)*

) \_\_\_\_\_  
) *(title)*

) I have the authority to bind the corporate entity  
)

**EXECUTED** in the presence of:

\_\_\_\_\_  
As to Les Soeurs de St. Francois D'Assise's  
authorized signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

) LES SOEURS DE ST. FRANCOIS D'ASSISE  
)  
)

) \_\_\_\_\_  
) *(signature)*

) \_\_\_\_\_  
) *(name of person signing)*

) \_\_\_\_\_  
) *(title)*

) I have the authority to bind the corporate entity  
)

**EXECUTED** in the presence of:

\_\_\_\_\_  
As to Insitut Des Soeurs Du Bon Conseil's  
authorized signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

) INSITUT DES SOEURS DU BON CONSEIL  
)  
)

) \_\_\_\_\_  
) *(signature)*

) \_\_\_\_\_  
) *(name of person signing)*

) \_\_\_\_\_  
) *(title)*

) I have the authority to bind the corporate entity  
)







**EXECUTED** in the presence of:

As to Les Résidence Oblates du  
Québec's authorized signatory

Print Name

Address

Occupation

**EXECUTED** in the presence of:

As to La Corporation Episcopale Catholique  
Romaine de la Baie James (The Roman  
Catholic Episcopal Corporation of James  
Bay)The Catholic Diocese of Moosonee's  
authorized signatory

Print Name

Address

Occupation

**EXECUTED** in the presence of:

As to Soeurs Grises de Montréal/Grey Nuns of  
Montreal 's authorized signatory

Print Name

Address

Occupation

LES RÉSIDENCE OBLATES DU QUÉBEC

(signature)

(name of person signing)

(title)

I have the authority to bind the corporate entity

LA CORPORATION EPISCOPALE  
CATHOLIQUE ROMAINE DE LA BAIE  
JAMES (THE ROMAN CATHOLIC  
EPISCOPAL CORPORATION OF JAMES  
BAY) THE CATHOLIC DIOCESE OF  
MOOSONEE

(signature)

(name of person signing)

(title)

I have the authority to bind the corporate entity

SOEURS GRISES DE MONTRÉAL/GREY  
NUNS OF MONTREAL

(signature)

(name of person signing)

(title)

I have the authority to bind the corporate entity

















**EXECUTED** in the presence of:

As to La Corporation Episcopale Catholique  
Romaine de Grouard's authorized signatory

Print Name

Address

Occupation

LA CORPORATION EPISCOPALE  
CATHOLIQUE ROMAINE DE GROUARD

(signature)

(name of person signing)

(title)

I have the authority to bind the corporate entity

**EXECUTED** in the presence of:

As to Roman Catholic Episcopal Corporation  
of Keewatin's authorized signatory

Print Name

Address

Occupation

ROMAN CATHOLIC EPISCOPAL  
CORPORATION OF KEEWATIN

(signature)

(name of person signing)

(title)

I have the authority to bind the corporate entity

**EXECUTED** in the presence of:

As to La Corporation Archiépiscope  
Catholique Romaine de St. Boniface's  
authorized signatory

Print Name

Address

Occupation

LA CORPORATION ARCHIEPISCOPALE  
CATHOLIQUE ROMAINE DE ST.  
BONIFACE

(signature)

(name of person signing)

(title)

I have the authority to bind the corporate entity



**EXECUTED** in the presence of:

\_\_\_\_\_  
As to The Roman Catholic Bishop of Thunder  
Bay's authorized signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

) THE ROMAN CATHOLIC BISHOP OF  
) THUNDER BAY  
)

) \_\_\_\_\_  
) *(signature)*  
)

) \_\_\_\_\_  
) *(name of person signing)*  
)

) \_\_\_\_\_  
) *(title)*  
)

) I have the authority to bind the corporate entity

**EXECUTED** in the presence of:

\_\_\_\_\_  
As to Immaculate Heart Community of Los  
Angeles CA's authorized signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

) IMMACULATE HEART COMMUNITY OF  
) LOS ANGELES CA  
)

) \_\_\_\_\_  
) *(signature)*  
)

) \_\_\_\_\_  
) *(name of person signing)*  
)

) \_\_\_\_\_  
) *(title)*  
)

) I have the authority to bind the corporate entity

**EXECUTED** in the presence of:

\_\_\_\_\_  
As to Archdiocese of Vancouver The Roman  
Catholic Archbishop of Vancouver's  
authorized signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

) ARCHDIOCESE OF VANCOUVER THE  
) ROMAN CATHOLIC ARCHBISHOP OF  
) VANCOUVER  
)

) \_\_\_\_\_  
) *(signature)*  
)

) \_\_\_\_\_  
) *(name of person signing)*  
)

) \_\_\_\_\_  
) *(title)*  
)

) I have the authority to bind the corporate entity

**EXECUTED** in the presence of:

\_\_\_\_\_  
As to Roman Catholic Diocese of Whitehorse's  
authorized signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

) ROMAN CATHOLIC DIOCESE OF  
) WHITEHORSE  
)

) \_\_\_\_\_  
) (*signature*)  
)

) \_\_\_\_\_  
) (*name of person signing*)  
)

) \_\_\_\_\_  
) (*title*)  
)

) I have the authority to bind the corporate entity

**EXECUTED** in the presence of:

\_\_\_\_\_  
As to The Roman Catholic Episcopal  
Corporation of Mackenzie-Fort Smith's  
authorized signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

) THE ROMAN CATHOLIC EPISCOPAL  
) CORPORATION OF MACKENZIE-FORT  
) SMITH  
)

) \_\_\_\_\_  
) (*signature*)  
)

) \_\_\_\_\_  
) (*name of person signing*)  
)

) \_\_\_\_\_  
) (*title*)  
)

) I have the authority to bind the corporate entity

**EXECUTED** in the presence of:

\_\_\_\_\_  
As to The Roman Catholic Episcopal  
Corporation of Prince Rupert's authorized  
signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

) THE ROMAN CATHOLIC EPISCOPAL  
) CORPORATION OF PRINCE RUPERT  
)

) \_\_\_\_\_  
) (*signature*)  
)

) \_\_\_\_\_  
) (*name of person signing*)  
)

) \_\_\_\_\_  
) (*title*)  
)

) I have the authority to bind the corporate entity

**EXECUTED** in the presence of:

As to Episcopal Corporation of Saskatoon's authorized signatory

Print Name \_\_\_\_\_

Address

Occupation

**EXECUTED** in the presence of:

As to OMI Lacombe Canada Inc.'s authorized signatory

Print Name \_\_\_\_\_

Address

Occupation

**EXECUTED** in the presence of:

As to The Corporation's authorized signatory

---

Print Name \_\_\_\_\_

## Address

Occupation

EPISCOPAL CORPORATION OF  
SASKATOON

(signature)

(name of person signing)

(title)

I have the authority to bind the corporate entity

OMI LACOMBE CANADA INC.

(signature)

(name of person signing)

(title)

I have the authority to bind the corporate entity

THE • CORPORATION

(signature)

(name of person signing)

(title)

I have the authority to bind the corporate entity

**EXECUTED** in the presence of:

\_\_\_\_\_  
As to the signature of the Minister

) HER MAJESTY IN RIGHT OF CANADA, as  
) represented by the Minister of Indian  
) Residential Schools Resolution Canada  
)  
) \_\_\_\_\_  
) (*signature*)  
)  
) \_\_\_\_\_  
) (*name of person signing*)  
)  
) \_\_\_\_\_  
) Minister  
)

## **SCHEDULE A**

### **LIST OF THE CATHOLIC ENTITIES**

1. Sisters of Charity, a body corporate also known as Sisters of Charity of St. Vincent de Paul, Halifax also known as Sisters of Charity of Halifax
2. The Roman Catholic Episcopal Corporation of Halifax
3. Les Soeurs De Notre Dame-Auxiliatrice
4. Les Soeurs de St. Francois D'Assise
5. Insitut Des Soeurs Du Bon Conseil
6. Les Soeurs de Saint-Joseph de Saint-Hyacinthe (The Sisters of St. Joseph of St. Hyacinthe)
7. Les Soeurs de Jesus-Marie
8. Les Soeurs de L'Assomption de la Sainte Verge
9. Les Soeurs de l'Assomption de la Saint Vierge de l'Alberta
10. Les Soeurs de la Charité de St.-Hyacinthe
11. Les Oeuvres Oblates de l'Ontario
12. Les Résidence Oblates du Québec
13. La Corporation Episcopale Catholique Romaine de la Baie James (The Roman Catholic Episcopal Corporation of James Bay) The Catholic Diocese of Moosonee
14. Soeurs Grises de Montréal/  
Grey Nuns of Montreal
15. Sisters of Charity (Grey Nuns) of

## Alberta

16. Les Soeurs de La Charité des T.N.O.  
Grey Nun's Regional Centre
17. Hôtel-Dieu de Nicolet (HDN)
18. The Grey Nuns of Manitoba Inc. -  
Les Soeurs Grises du Manitoba Inc.
19. La Corporation Episcopale  
Catholique Romaine de la Baie d' Hudson  
The Roman Catholic Episcopal Corporation  
of Hudson's Bay
20. Missionary Oblates - Grandin
21. Les Oblats de Marie Immaculée  
du Manitoba
22. The Archiepiscopal Corporation of Regina
23. The Sisters of the Presentation
24. The Sisters of St. Joseph of Sault St. Marie
25. Les Soeurs de la Charité d'Ottawa -  
Sisters of Charity of Ottawa
26. Oblates of Mary Immaculate -  
St. Peter's Province
27. The Sisters of Saint Ann
28. Sisters of Instruction of the Child Jesus
29. The Benedictine Sisters of Mt. Angel Oregon
30. Les Peres Montfortains
31. The Roman Catholic Bishop of Kamloops  
Corporation Sole
32. The Bishop of Victoria, Corporation  
Sole



33. The Roman Catholic Bishop of Nelson  
Corporation Sole
34. Order of the Oblates of Mary Immaculate in  
the Province of British Columbia
35. The Sisters of Charity of Providence  
of Western Canada
36. La Corporation Episcopale Catholique  
Romaine de Grouard
37. Roman Catholic Episcopal Corporation  
of Keewatin
38. La Corporation Archiépiscope  
Catholique Romaine de St. Boniface
39. Les Missionnaires Oblates de St. Boniface  
The Missionary Oblate Sisters  
of St. Boniface
40. Roman Catholic Archiepiscopal  
Corporation of Winnipeg
41. La Corporation Episcopale Catholique  
Romaine De Prince Albert
42. The Roman Catholic Bishop of Thunder Bay
43. Immaculate Heart Community  
of Los Angeles CA
44. Archdiocese of Vancouver  
The Roman Catholic  
Archbishop of Vancouver
45. Roman Catholic Diocese of Whitehorse  
The Catholic Episcopal  
Corporation of Whitehorse
46. The Roman Catholic Episcopal Corporation  
of Mackenzie-Fort Smith

47. The Roman Catholic Episcopal  
Corporation of Prince Rupert

48. OMI Lacombe Canada Inc.

## **SCHEDULE B**

### **THE CATHOLIC HEALING, RECONCILIATION AND SERVICE EVALUATION COMMITTEE**

1. The parties agree that there shall be a Committee known as The Catholic Healing, Reconciliation Service Evaluation Committee ("the Committee") which shall be responsible to make grants of monies deposited with the Corporation and to approve In-Kind Services and admissible programs, all in accordance with this Agreement.
2. The reasonable administration costs of operating the Committee shall be paid first from the interest on funds held by the Corporation and thereafter may, with the consent in writing of the Government, be paid from the capital amount held by the Corporation. The Government may not unreasonably withhold the consent referred to in this Section.
3. The Committee shall be composed of seven members of which three members will be appointed by Catholic Entities; three members will be appointed by the AFN; and one member shall be appointed by Indian Residential Schools Resolution, Canada.
4. As much as possible, the Committee shall make decisions by consensus. Where a consensus cannot be reached through reasonable discussion and compromise, decisions may be taken by simple majority.
5. The guiding objective of the Committee shall be to ensure that admissible programs and services are directed to healing and reconciliation for former Indian Residential School students and their families. For greater certainty, the parties recognize that programs and services aimed at the community level may be admissible to the extent that the Committee is satisfied that the programs or service benefits are reasonably connected with healing and reconciliation for IRS students and their families.
6. Where an existing program or service is proposed, the Committee may certify the program or service to the extent that the Committee believes that the program or service or some part thereof is new or would not otherwise continue.
7. Programs and services must be open to all Aboriginal people regardless of denomination.
8. In addition the Committee shall consider the following criteria to applications for grants and for the approval of In-Kind Services.
  - a). Do Aboriginal people have input in developing and delivery of the program?
  - b). Has the program been effective in the past?
  - c). To what extent are aboriginal communities involved in the program?

- d) Does the program or service deal with former students, or their families and communities and the aftermath of IRS including providing assistance with the recovery of their histories?
  - e) What portion of the overall cost of the program addresses the social, psychological, and health issues without regard to religiosity?
9. Where the Committee approves a service or program as an admissible In-Kind Service, it shall assess the value in dollars of the program having regard to its actual cost and the market value of similar services. The lesser of these two amounts must be used unless there are compelling reasons to chose a higher amount.
10. The Committee shall require applicants to certify that no program proposed for In-Kind eligibility has received grants drawn from either the Catholic Entities' \$29,000,000 cash contribution under this Agreement or the fruits of fund raising under this Agreement. For greater certainty, this condition is only meant to ensure that services funded under the settlement (or portions thereof) are not counted as eligible In-Kind Services.
11. Notwithstanding section 6 of this Schedule, the Committee as an interim measure may credit the value of a program or service offered between March 31, 2005 and the coming into force of this agreement toward the In-Kind Services provided that:
- a) it meets the criteria set out in sections 7 and 8 of this Schedule;
  - b) the program or service did not exist before March 31, 2005 unless otherwise agreed to by Canada;
  - c) the same program or service cannot be certified for a period following the coming into force of this Agreement unless it can be shown that it would not otherwise continue; and
  - d) in no case shall the total amount credited for programs and services provided before the coming into force of this Agreement exceed \$1,500,000.
12. The parties agree that the Committee may meet and make decisions under section 11 of this Schedule before the coming into force of this Agreement, and that following the coming into force of this Agreement the decisions the Committee makes in this period shall be ratified without further review and the costs and reasonable expenses incurred shall be reimbursed by the Corporation in accordance with section 3.12 of this Agreement. For greater certainty, should this Agreement not come into force the decisions made under sections 11 and 12 shall have no force or effect and the Corporation has no obligation to make reimbursement.

## **SCHEDULE C**

### **CONDITIONS UNDER WHICH PAYMENTS ARE MADE FROM THE CORPORATION TO THE ABORIGINAL HEALING FOUNDATION ("AHF")**

The Corporation shall pay monies deposited with it under Sections 3.3 as follows:

1. The Corporation shall receive applications for funding of healing and reconciliation programs.
2. Where the application is one that the Corporation supports, it shall forward the application to the AHF for its consideration.
3. Where the AHF approves the application in accordance with its ordinary criteria, the Corporation shall pay to the AHF the amount of funding approved for the program.
4. Subject to article 5 of this Schedule, where an application is not accepted by the AHF, the Corporation may fund the program if it satisfies the criteria set out in Schedule B.
5. At least 80% of monies paid under Section 3.3 of this Agreement shall be transferred to the AHF in accordance with this Schedule.
6. Where at the end of the 5 year period set out in Section 3.3.2, the Corporation has not spent all the monies paid under 3.3 of this Agreement in accordance with articles 1 through 5 of this Schedule, the balance shall be paid to the AHF to be spent in accordance with its ordinary criteria, unless otherwise agreed in writing by the Government and the Corporation.

## SCHEDULE D

### FULL AND FINAL RELEASE IN CLAIMS BY PERSONS WHO OPT OUT OF THE IRSSA

IN CONSIDERATION of the payment of the sum of \$10.00 and other good and valuable consideration, all inclusive, all of which is directed to be paid to my solicitors, \_\_\_\_\_, in trust:

1. I, \_\_\_\_\_, fully, finally and forever release and discharge, separately and severally, each of

(a) Her Majesty the Queen in Right of Canada, the Attorney General of Canada, their successors, and assigns, and their Ministers, officers, employees, servants, partners, principals, attorneys, subrogees, representatives and agents; and

(b) the [Church Organization] and its predecessors, successors, transferees assigns, and their officers, employees, members, servants, directors, shareholders, partners, principals, attorneys, insurers, subrogees, representatives, administrators, receivers and agents;

(the "Releasees") from any and all actions or causes of action, liabilities, claims and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which I ever had, now have or may in the future have against them (whether I now know about these claims or causes of action or not) arising from or in any way related to

(a) my attendance, presence and/or experiences at any Indian Residential School; and

(b) the operation of any Indian Residential School.

2. Paragraph 1 of this Release extends to claims that belong to and could be made by me personally, whether asserted directly by me, or by any other person, group or legal entity on my behalf or as my representative, through a class action or otherwise.

3. In addition, I fully, finally and forever release and discharge the Releasees from any and all claims which were or could have been asserted against them by me in an action against some or all of the Releasees, being [Court file no.] issued in the [Court Registry] of the [proper name of court], for compensation, damages and other relief relating to my attendance, presence and/or experiences at \_\_\_\_\_ Indian Residential School (the "Action"). I agree to the dismissal of the Action.

4. The claims and causes of action referred to in paragraphs 1 to 3 are referred to in this Release as "the Released Claims".
5. I will not make any further claims of any kind against the Releasees with respect to the Released Claims.
6. I understand that if at any time I, or anyone on my behalf, make any further claim or demand, or threaten to start an action against any of the Releasees in respect of any of the Released Claims, the Releasees may rely on this Release as an estoppel and a complete defence to any such claim or action.
7. I represent and warrant that I have not assigned any of the Released Claims to any person or corporation.
8. I agree that I will not make any or continue any claim in relation to the Released Claims against any person or corporation who could claim for any or all of the damages, contribution or indemnity or other relief in respect of my claim from any of the Releasees whether pursuant to the provisions of the *Negligence Act* (Province or Territory) or its counterpart in other common law jurisdictions, the common law, or any other statute of any jurisdiction.
9. I further agree to indemnify the Releasees in respect of claims that may be brought against them by any person, legal entity, government or government agency that arise out of or are in any way connected with payments made to me by that person, legal entity, government or government agency in relation to the Released Claims. This indemnity includes, but is not restricted to, claims relating to medical and/or dental services or treatment provided to me, and claims relating to compensation paid to me by any government or government agency authority for any of the Released Claims that are criminal assaults.
10. If I later commence a claim that is not a Released Claim for damages for harm or injuries which are the same as or similar to the harm or injuries resulting from the Released Claims, and the Releasees or any of them are made parties to such action, the fact and amount of this Release, as well as the details of the damages or harm which I claimed in the Released Claims, may be disclosed by the Releasees to the court in the context of such later claim.
11. I acknowledge and declare that I fully understand the terms of this Release, and that I have signed the Release voluntarily. I further acknowledge that I have sought and obtained legal advice in respect of the Released Claims and this Release.
12. I understand that the Releasees do not admit any liability to me by acceptance of this Release or by any payment that may be made to me.

I have signed this Release the \_\_\_\_ day of \_\_\_\_\_, 200\_.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
[Name of Releasor]

\_\_\_\_\_  
Address

\_\_\_\_\_  
Seal

\_\_\_\_\_  
Occupation



## **SCHEDULE E**

### **PROCESS FOR PROVIDING DOCUMENTS TO THE TRUTH AND RECONCILIATION COMMISSION**

1. In order to ensure the efficacy of the Truth and Reconciliation process, the Catholic Entities will provide all relevant documents in their possession or control to and for the use of the Truth and Reconciliation Commission, (the "Commission") subject to the privacy interests of an individual as provided by applicable privacy legislation, and subject to and in compliance with applicable privacy and access to information legislation, and except for those documents for which solicitor-client privilege applies and is asserted.
2. In cases where privacy interests of an individual exist, and subject to and in compliance with applicable privacy legislation and access to information legislation, researchers for the Commission shall have access to the documents, provided privacy is protected. In cases where solicitor-client privilege is asserted, the asserting party will provide a list of all documents for which the privilege is claimed.
3. The Catholic Entities are not required to give up possession of their original documents to the Commission. They are required to compile all relevant documents in an organized manner for review by the Commission and to provide access to their archives for the Commission to carry out its mandate. Provision of documents does not require provision of original documents. Originals or true copies may be provided or originals may be provided temporarily for copying purposes if the original documents are not to be housed with the Commission.
4. Each Catholic Entity shall bear the costs of the provision of documents. If requested by the party providing the documents, the costs of copying, scanning, digitalizing, or otherwise reproducing the documents will be borne by the Commission.
5. The Commission may refer to the National Administration Committee, ("NAC") as empowered by section 4.11(12)(j) of the Indian Residential Schools Settlement Agreement dated ● , 2006 the determination of disputes involving document production, document disposal and archiving, contents of the Commission's Report and Recommendations and Commission decisions regarding the scope of its research and issues to be examined. The Commission shall make best efforts to resolve the matter itself before referring it to the NAC.
6. The NAC may review and determine the reference made to the Commission pursuant to section 5 or may refer the reference to any one of the Courts for a *de novo* determination.

7. Where the NAC makes a decision under section 6, the Catholic Entities, as of right, may apply to any one of the Courts for *a de novo* determination.

## **SCHEDULE F**

### **SECTIONS OF IRSSA INCORPORATED BY REFERENCE**

#### **ARTICLE FOUR IMPLEMENTATION OF THIS AGREEMENT**

##### **4.01 Class Actions**

The Parties agree that all existing class action statements of claim and representative actions, except the Cloud Class Action, filed against Canada in relation to Indian Residential Schools in any court in any Canadian jurisdiction except the Federal Court of Canada (the "original claims") will be merged into a uniform omnibus Statement of Claim in each jurisdiction (the "Class Actions"). The omnibus Statement of Claim will name all plaintiffs named in the original claims and will name as Defendants, Canada and the Church Organizations.

##### **4.05 Consent Certification**

- (1) The Parties agree that concurrent with the applications referred to in Section 4.03, applications will be brought in each of the Courts for consent certification of each of the Class Actions for the purposes of Settlement in accordance with the terms of the Agreement.
- (2) Consent certification will be sought on the express condition that each of the Courts, pursuant to the applications for consent certification under Section 4.05(1), certify on the same terms and conditions; including the terms and conditions set out in Section 4.06 save and except for the variations in class and subclass membership set out in Sections 4.02 and 4.04 of this Agreement.

##### **4.06 Approval Orders**

Approval Orders will be sought:

- (a) incorporating by reference this Agreement in its entirety.
- (b) ordering and declaring that such orders are binding on all Class Members, including Persons Under Disability, unless they opt out or are deemed to have opted out on or before the expiry of the Opt Out Periods;
- (c) ordering and declaring that on the expiry of the Opt Out Periods all pending actions of all Class Members, other than the Class Actions, relating to Indian Residential Schools, which have been filed in any court in any Canadian jurisdiction against Canada or the Church Organizations, except for any pending actions in Quebec which have not been voluntarily

discontinued by the expiry of the Opt Out Period will be deemed to be dismissed without costs unless the individual has opted out, or is deemed to have opted out on or before the expiry of the Opt Out Periods.

- (d) ordering and declaring that on the expiry of the Opt Out Periods all class members, unless they have opted out or are deemed to have opted out on or before the expiry of the Opt Out Periods, have released each of the defendants and Other Released Church Organizations from any and all actions they have, may have had or in the future may acquire against any of the defendants and Other Released Church Organizations arising in relation to an Indian Residential School or the operation generally of Indian Residential Schools.
- (e) ordering and declaring that in the event the number of Eligible CEP Recipients opting out or deemed to have opted out under the Approval Orders exceeds five thousand (5000), this Agreement will be rendered void and the Approval Orders set aside in their entirety subject only to the right of Canada, in its sole discretion, to waive compliance with Section 4.14 of this Agreement.
- (f) ordering and declaring that on the expiration of the Opt Out Periods all Class Members who have not opted out have agreed that they will not make any claim arising from or in relation to an Indian Residential School or the operation generally of Indian Residential Schools against any person who may in turn claim against any of the defendants or Other Released Church Organizations.
- (g) ordering and declaring that the obligations assumed by the defendants under this Agreement are in full and final satisfaction of all claims arising from or in relation to an Indian Residential School or the operation of Indian Residential Schools of the Class Members and that the Approval Orders are the sole recourse on account of any and all claims referred to therein.
- (h) ordering and declaring that the fees and disbursements of all counsel participating in this Agreement are to be approved by the Courts on the basis provided in Articles Four (4) and Thirteen (13) of this Agreement, except that the fees and disbursements of the NCC and the IAP Working Group will be paid in any event.
- (i) ordering and declaring that notwithstanding Section 4.06(c), (d) and (f), a Class Member who as of the fifth anniversary of the Implementation Date had never commenced an action other than a class action in relation to an Indian Residential School or the operation of Indian Residential Schools, participated in a Pilot Project, applied to the DR Model, or applied to the

IAP, may commence an action for any of the Continuing Claims within the jurisdiction of the court in which the action is commenced. For greater certainty, the rules, procedures and standards of the IAP are not applicable to such actions.

- (j) ordering and declaring that where an action permitted by Section 4.06(i) is brought, the deemed release set out in Section 11.01 is amended to the extent necessary to permit the action to proceed only with respect to Continuing Claims.
- (k) ordering and declaring that for an action brought under Section 4.06(i) all limitations periods will be tolled and any defences based on laches or delay will not be asserted by the parties with regard to a period of five years from the Implementation Date.

## **ARTICLE SEVEN**

### **TRUTH AND RECONCILIATION AND COMMEMORATION**

#### **7.01 Truth and Reconciliation**

- (2) The Truth and Reconciliation Commission may refer to the NAC for determination of disputes involving document production, document disposal and archiving, contents of the Commission's Report and Recommendations and Commission decisions regarding the scope of its research and issues to be examined. The Commission shall make best efforts to resolve the matter itself before referring it to the NAC.
- (3) Where the NAC makes a decision in respect of a dispute or disagreement that arises in respect of the Truth and Reconciliation Commission as contemplated in Section 7.01(2), either or both the Church Organization and Canada may apply to any one of the Courts for a hearing *de novo*.

## **ARTICLE ELEVEN**

### **RELEASES**

#### **11.01 Class Member and Cloud Class Member Releases**

- (1) The Approval Orders will declare that in the case of Class Members and Cloud Class Members:
  - a) Each Class Member and Cloud Class Member has fully, finally and forever released each of the Releasees from any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims and demands of every nature or kind available, asserted or which could have been asserted whether known

or unknown including for damages, contribution, indemnity, costs, expenses and interest which any such Class Member or Cloud Class Member ever had, now has, or may hereafter have, directly or indirectly arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to an Indian Residential School or the operation of Indian Residential Schools and this release includes any such claim made or that could have been made in any proceeding including the Class Actions or the Cloud Class Action whether asserted directly by the Class Member or Cloud Class Member or by any other person, group or legal entity on behalf of or as representative for the Class Member or Cloud Class Member.

- b) The Class Members and Cloud Class Members are deemed to agree that they will not make any claim or demand or take any actions or proceedings against any Releasee or any other person or persons in which any claim could arise against any Releasee for damages and/or contribution and/or indemnity and/or other relief over under the provisions of the *Negligence Act*, R.S.O. 1990, c. N-3, or its counterpart in other jurisdictions, the common law, Quebec civil law or any other statute of Ontario or any other jurisdiction in relation to an Indian Residential School or the operation of Indian Residential Schools;
- c) Canada's, the Church Organizations' and the Other Released Church Organizations' obligations and liabilities under this Agreement constitute the consideration for the releases and other matters referred to in Section 11.01(a) and (b) inclusive and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Class Members or and Cloud Class Members are limited to the benefits provided and compensation payable pursuant to this Agreement, in whole or in part, as their only recourse on account of any and all such actions, causes of actions, liabilities, claims and demands.

- (2) Notwithstanding Section 11.01(1), no action, except for Family Class claims as set out in the Class Actions and the Cloud Class Action, capable of being brought by a Class Member or Cloud Class Member will be released where such an action would be released only by virtue of being a member of a Family Class in the Class Actions or the Cloud Class Action.

## **11.02 Non-resident Claimant Releases**

- (1) The Approval Orders will order and declare that Non-resident Claimants on being accepted into the IAP, must execute a Release in the form set out

in Schedule "P" of this Agreement.

- (2) Nothing in Section 4.06 (c), (d) or (f) or Section 11.01(1)(a) will prevent a Non-resident Claimant from pursuing his or her claim in the IAP.
- (3) For greater certainty nothing in this Section 11.02 will prevent the bringing of an action contemplated in Section 4.06(i) and (j) of this Agreement.

### **11.03 Claims by Opt Outs and Others**

If any person not bound by this Agreement claims over or brings a third party claim, makes any claim or demand or takes any action or proceeding against any defendant named in the Class Actions or the Cloud Class Action arising in relation to an Indian Residential School or the operation of Indian Residential Schools, no amount payable by any defendant named in the Class Actions or the Cloud Class Action to that person will be paid out of the Designated Amount Fund.

## **ARTICLE THIRTEEN LEGAL FEES**

### **13.02 Negotiation Fees (July 2005 – November 20, 2005)**

- (1) Canada agrees to pay each lawyer, other than lawyers representing the Church Organizations, who attended the settlement negotiations beginning July 2005 leading to the Agreement in Principle for time spent up to the date of the Agreement in Principle in respect of the settlement negotiations at his or her normal hourly rate, plus reasonable disbursements, and GST and PST, if applicable, except that no amount is payable under this Section 13.02(1) for fees previously paid directly by OIRSRC.
- (2) All legal fees payable under Section 13.02(1) will be paid no later than 60 days after the Implementation Date.

### **13.03 Fees to Complete Settlement Agreement (November 20, 2005 – Execution of Settlement Agreement)**

- (1) Canada agrees to pay each lawyer, other than lawyers representing the Church Organizations, for time spent between November 20, 2005 and the date of execution of this Agreement in respect of finalizing this Agreement at each lawyer's normal hourly rate, plus reasonable disbursements and GST and PST, if applicable, except that no amount is payable under this Section 13.02(1) for fees previously paid directly by OIRSRC.

- (2) No fees will be payable under Section 13.03(1) for any work compensated under Section 13.04 of this Agreement.
- (3) All legal fees payable under Section 13.03(1) will be paid no later than 60 days after the Implementation Date.

### **13.10 NCC Fees**

- (1) Canada will pay members of the NCC fees based upon reasonable hourly rates and reasonable disbursements, but such fees will not include any fee for the Government of Canada, or the Church Organizations.
- (2) Subject to Section 13.10(4), any fees referred to in Section 13.10(1) and accrued after April 1, 2006 will be subject to a maximum operating budget of sixty-thousand dollars (\$60,000.00) per month.
- (3) Notwithstanding Section 13.10(2) and subject to Section 13.10(4), the NCC may apply to Canada for additional funding in exceptional circumstances up to a maximum monthly amount of fifteen thousand dollars (\$15,000.00).
- (4) The maximum operating budget referred to in Section 13.10(1) and the maximum additional funding in exceptional circumstances referred to in Section 13.10(3) will be reviewed and reassessed by Canada on July 1, 2006 and the first day of each month thereafter. Canada, in its sole discretion, may reduce or increase the maximum operating budget or the maximum additional funding or both.
- (5) Counsel who is designated by the NCC as counsel having carriage in respect of drafting, consent certification and approval of the settlement will be paid their normal hourly rates and reasonable disbursements to be billed by Counsel and paid by Canada on an ongoing basis. Such fees and disbursements are not subject to the maximum operating budget referred to in paragraph 13.10(2).
- (6) Other counsel who appear in court, if designated by the NCC and approved by Canada, will be paid an appearance fee of two thousand dollars (\$2000.00) per diem. Such fees are not subject to the maximum operating budget referred to in paragraph 13.10(2).
- (7) The NCC, and counsel appointed on behalf of the NCC, will submit their accounts to the OIRSRC for payment, and will be paid within 60 days of such submission.



- (8) The NCC will submit its accounts to the OIRSRC for payment. The submitted accounts will be verified by OIRSRC to ensure compliance with the Treasury Board Travel Directive, attached as Schedule "Q", prior to payment.

### **13.11 NAC Fees**

- (1) Members of the NAC will be compensated at reasonable hourly rates subject to the maximum monthly operating budget set out at Section 13.11(2) of this Agreement except the representatives for Canada or the Church Organizations, who will not be compensated under this Agreement.
- (2) Subject to Section 13.11(4), any fees referred to in Section 13.10(1) will be subject to a maximum operating budget of sixty-thousand dollars (\$60,000.00) per month.
- (3) Notwithstanding Section 13.11(2) and subject to Section 13.11(4), the NAC may apply to Canada for additional funding in exceptional circumstances up to a maximum monthly amount of fifteen thousand dollars (\$15,000.00).
- (4) The maximum operating budget referred to in Section 13.11(2) and the maximum additional funding in exceptional circumstances referred to in Section 13.11(3) will be reviewed and reassessed by Canada on the first day of the first month after the Implementation Date and on the first day of each month thereafter. Canada, in its sole discretion, may reduce or increase the maximum operating budget or the maximum additional funding or both.
- (5) The NAC will submit its accounts to the OIRSRC for payment. The submitted accounts will be verified by OIRSRC to ensure compliance with the Treasury Board Travel Directive, attached as Schedule "Q", prior to payment.

## **ARTICLE FIFTEEN TRANSITION PROVISIONS**

### **15.01 No Prejudice**

The parties agree that the no prejudice commitment set out in the letter of the Deputy Minister of the OIRSRC dated July, 2005, and attached as Schedule "R" means that following the Implementation Date:

- (4) Following the coming into force of the Approval Orders, at the request of an Eligible IAP Claimant whose IRS abuse claim was settled by Canada without contribution from a Catholic Entity set out in Schedule "C" of this Agreement, such settlement having been for an amount representing a fixed reduction from the assessed Compensation, Canada will pay the balance of the assessed compensation to the Eligible IAP Claimant. Provided, however, that no amount will be paid to an Eligible IAP Claimant pursuant to this section until the Eligible IAP Claimant agrees to accept such amount in full and final satisfaction of his or her claim against a Catholic entity set out in Schedule "C" of this Agreement, and to release them by executing a release substantially in the form of the release referred to in Section 11.02 of this Agreement.

## **SECTIONS OF INDEPENDENT ASSESSMENT PROCESS, SCHEDULE D TO THE IRSSA, INCORPORATED BY REFERENCE**

### **APPENDIX II: ACCEPTANCE OF APPLICATION (Schedule D page 19)**

- iii. On admitting the claim to the IAP, the Secretariat shall forward a copy of the application to the Government and to a church entity which is a party to the Class Action Judgments and was involved in the IRS from which the claim arises.
  - A church entity may waive its right to receive applications for all claims, or for defined classes of claims, by notice in writing to the Secretariat, and may amend or withdraw such waiver at any time by notice in writing.
- iv. The following conditions apply to the provision of the application to the Government or a church entity:
  - The application will only be shared with those who need to see it to assist the Government with its defence, or to assist the church entities with their ability to defend the claim or in connection with their insurance coverage;
  - If information from the application is to be shared with an alleged perpetrator, only relevant information about allegations of abuse by that person will be shared, and the individual will not be provided with the Claimant's address or the address of any witness named in the application form, nor with any information from the form concerning the effects of the alleged abuse on the Claimant, unless the Claimant asks that this be provided to the alleged perpetrator;
  - Each person with whom the application is shared, including counsel for any party, must agree to respect its confidentiality. Church entities will use their

best efforts to secure the same commitment from any insurer with whom it is obliged to share the application;

- Copies will be made only where absolutely necessary, and all copies other than those held by the Government will be destroyed on the conclusion of the matter, unless the Claimant asks that others retain a copy, or unless counsel for a party is required to retain such copy to comply with his or her professional obligations.

### **APPENDIX III: INVOLVEMENT OF ALLEGED PERPETRATORS (Schedule D page 21)**

- i. The defendants will attempt to locate the alleged perpetrator to invite them to the hearing. If the alleged perpetrator is dead, cannot be located, or declines to attend, the hearing may still occur.

### **APPENDIX IV: INFORMATION COLLECTION; SETTING HEARING DATE; ATTENDANCE AND PARTICIPATION AT HEARING**

- i. The defendants will collect and submit their documents to the Secretariat.
- vii. Given the non-adversarial nature of this IAP and the neutral, inquisitorial role played by the adjudicators under it, as well as the need to respect the safety of the Claimant, neither an alleged perpetrator nor counsel for an alleged perpetrator may attend while the Claimant gives evidence, without the Claimant's advance consent. Where counsel for a church entity also acts for an alleged perpetrator, this means that they may not attend the hearing while the Claimant gives evidence without the Claimant's advance consent. Government representatives may always attend this part of the hearing, as may representatives of church entities who are parties to the Class Action Judgments except their counsel if he or she is also acting for an alleged perpetrator in the case.

### **APPENDIX X: THE USE OF EXTRA-CURIAL KNOWLEDGE BY ADJUDICATORS**

#### **INTRODUCTION**

A number of issues will arise concerning the ability of adjudicators to make use of information obtained or known beyond that provided by the parties in each individual case. There are several aspects to this matter:

- use of background information and/or personal knowledge, for example on
  - schools
  - child abuse and its impacts
  - the residential school system

- carry-forward of information from hearing to hearing, for example on
  - alleged perpetrators and the *modus operandi* of proven perpetrators
  - conditions at a school
  - credibility findings
- use of precedents from other adjudicators
- ability of adjudicators to confer

The approach to be taken to these issues is set out below, by reference to the source of the information in question.

### **1. Orientation Materials Provided to Adjudicators**

Adjudicators will be supplied with orientation materials on the residential school system and its operations, as well as on child abuse and its impacts.

If any of the orientation materials are specifically identified as containing uncontested facts or opinions, they may be used as follows:

Adjudicators are expected to inform themselves from this material. They may use it to question witnesses, but also to make findings of fact and to support inferences from evidence they find credible, for example to conclude that trauma of a certain kind can be expected to flow from a sexual assault on a child. These latter uses of this information are justified by the fact that representatives of all interests have agreed to its inclusion in the orientation materials for this use, and all participants in a hearing will have access to the orientation materials.

Wherever possible the adjudicator should use the information at the hearing to formulate questions to any witnesses who may be able to comment on it, or whose testimony it may contradict, support, or help explain. Where this is not possible, the proposed use in reaching a decision should be identified to the parties at the hearing to give them a chance to comment on it in their submissions, but so doing is not a condition precedent to the proposed use.

Where the material is used in coming to a finding of fact, or drawing an inference, it should be cited and its relevance and the rationale for its use set out in the decision.

Where orientation information provided to adjudicators does not represent uncontested facts or opinions, it may be used by adjudicators as follows:

Adjudicators may use this category of orientation materials as a basis for

questioning witnesses, or testing the evidence, but may not rely on it as an independent basis for their conclusions of fact or their assessment of the actual impact of abuse on an individual.

## **2. Personal Knowledge of Abuse and its Impacts**

Some adjudicators may bring to the job an extensive background in dealing with child abuse, or may receive information on child abuse and its impacts at training sessions or continuing education programs, or through their own reading or research.

The approach to the use of this kind of information is as follows:

Adjudicators may use their personal knowledge, training they have received, or general educational materials, as a basis for questioning witnesses, or testing the evidence, but may not rely on them as an independent basis for their conclusions of fact or their assessment of the actual impact of abuse on an individual.

## **3. Document Collections**

Adjudicators will be provided with Canada's, and potentially a church's, document collection on each school for which they are holding hearings. This material will also be available to Claimants and their counsel.

The approach to the use of this kind of information is as follows:

Adjudicators are expected to inform themselves from this material, which may be used as a basis for findings of fact or credibility. Where any of it is so used by adjudicators, it must be cited and its relevance and the rationale for use set out in the report.

Because this information is specific to the school in question and is provided in advance, it is expected that adjudicators will be familiar with it before starting a hearing to which it is relevant. Given this, before relying on specific documents to help decide a given case, the adjudicator should seek the consent of the parties, or put the relevant extracts to any witnesses who may be able to comment on them, or whose testimony they may contradict or support. Where there are no such witnesses, or where one or more parties contest the use of the documents, the adjudicator may still use them in his or her decision, but wherever possible should advise the parties of the proposed use of the document so that they may address it in their submissions.

## **4. Previous findings**

Adjudicators will hear evidence about, and make findings of fact about, the operations of various schools, their layouts, the conditions that pertained in them, the acts and knowledge of adult employees, and where an individual is found to have committed a

number of assaults in a particular way, their *modus operandi*.

The approach to the use of this kind of information is as follows:

Adjudicators must treat each individual's claim as a unique claim to be determined on the evidence presented, plus information expressly permitted to be used according to the guidelines agreed to for this process. They may not carry forward, much less be bound by, previous findings they have made, including findings of credibility.

They may, though, use information from previous hearings to inquire about possible admissions, or failing that, to question witnesses. This ability to bring forward information from previous hearings for these specific purposes flows from the fact that this IAP is not a party-controlled adversarial process. Instead, the inquisitorial model is being used to have adjudicators inquire into what happened, using their skills and judgment to question witnesses to determine the facts.

While it would not be fair to base a decision on evidence from a previous hearing, since some or all of the parties would not know its context, and would be unable to challenge its reliability, it is also not appropriate to insist that adjudicators act as if each case were their first one. Their job requires them to test evidence and determine what happened. While they cannot call witnesses, it is their duty to question them, and they must be free to pose questions and follow lines of inquiry they believe to be relevant. Whether that belief flows from common sense, instinct, or something heard at another hearing, it is appropriate as a basis of inquiry, although, in the absence of an admission, not as evidence.

## **5. Stare decisis**

Although reasons will be issued in each case, the IAP will not operate on the basis of binding precedent. All adjudicators are of equal authority, and should not consider themselves bound by each other's previous decisions. Through conferencing, adjudicators may come to a common interpretation of certain procedural issues, but each case must be determined on its own merits.

## **APPENDIX XI: TRANSITION FROM LITIGATION OR ADR PROJECTS, AND PRIORITIES FOR ACCESS TO THE IAP.**

All IRS Claimants who meet the criteria for this IAP may apply to it for the validation of their claim except:

1. Claimants who have settled their IRS claim, whether in the litigation stream or the existing DR, except as provided for in the transition rules established by the Class Action Judgments.
2. Claimants whose claims have been dealt with at trial.

For greater certainty, participation in unsuccessful resolution discussions with the Government or a church in an attempt to settle claims does not preclude access to the IAP. Only where one of the above conditions applies will an application to enter the new process be rejected.

### **Rules for Pre-existing Evidence**

Where a Claimant who has given evidence in a previous IRS proceeding in a pilot project, or in a hearing under the DR Model or this IAP (where a new hearing has been ordered following a review), or in litigation proceedings (including answers to interrogatories or participation in an examination for discovery), wants to and is eligible to enter the IAP:

- (i) the record of the previous evidence must be provided to the adjudicator in the IAP, who may use it as a basis to question the Claimant;
- (ii) the Claimant must appear before the adjudicator to give evidence, if a hearing is held;
- (iii) the Claimant may adopt their previous evidence rather than provide a narrative account at the hearing;
- (iv) the Claimant is subject to questioning by the adjudicator on the same basis as other Claimants.

The fact that a case is transferred from litigation where documentary rules are different does not change the kinds of documents permitted in proceedings under the IAP. For greater certainty, the only expert assessments permitted in this IAP are those conducted by an agreed-upon expert on the order of, and under the direction of, an adjudicator.

### **Potential for Expediting the Transfer**

To expedite transition to the new system, and reduce the burden of completing an application in circumstances where the Claimant has already given evidence, counsel for the Government and the claimant should endeavour to develop an agreed statement of fact on some or all of the issues based on the evidence given.

Phasing of Acceptance into the IAP

In considering applications to the IAP, including applications to the DR Model which are transferred to the IAP, priority will be given, in order, to:

- a) Applications from persons who submit a doctor's certificate indicating that they are in failing health such that further delay would impair their ability to

participate in a hearing;

- b) Applications from persons 70 years of age and over;
- c) Applications from persons 60 years of age and over;
- d) Persons who have completed examinations for discovery;
- e) Persons who are applying as members of groups.

Among persons in categories d or e, above, the health of any alleged perpetrator who has indicated they will give evidence at a hearing may be used to establish priority.

## **SECTIONS OF MANDATE FOR THE TRUTH AND RECONCILIATION COMMISSION, SCHEDULE N TO THE IRSSA, INCORPORATED BY REFERENCE**

### **10. Events**

There are three essential event components to the Truth and Reconciliation Commission: National Events, Community Events and Individual Statement-Taking/Truth Sharing. The Truth and Reconciliation process will be concluded with a final Closing Ceremony.

#### **(A) National Events**

The national events are a mechanism through which the truth and reconciliation process will engage the Canadian public and provide education about the IRS system, the experience of former students and their families, and the ongoing legacies of the institutions.

National events should include the following common components:

- (k) participation of high level government and church officials;

#### **(B) Community Events**

It is intended that the community events will be designed by communities and respond to the needs of the former students, their families and those affected by the IRS legacy including the special needs of those communities where Indian Residential Schools were located.

The community events are for the purpose of:

- (c) involving church, former school employees and government officials in the reconciliation process, if requested by communities;
- (f) allowing for the participation from high level government and church officials, if requested by communities;

#### **(D) Closing Ceremony**



The Commission shall hold a closing ceremony at the end of its mandate to recognize the significance of all events over the life of the Commission. The closing ceremony shall have the participation of high level church and government officials.

#### **14. Budget and Resources**

Institutional parties shall bear the cost of participation and attendance in Commission events and community events, as well as provision of documents. If requested by the party providing the documents, the costs of copying, scanning, digitalizing, or otherwise reproducing the documents will be borne by the Commission.

## SCHEDULE G

### NAMES AND ADDRESSES OF THE CATHOLIC ENTITIES FOR GIVING NOTICE

Name and address of Catholic Entities	Address for Service
<p>1. <b>Sisters of Charity, a body corporate also known as Sisters of Charity of St. Vincent de Paul, Halifax also known as Sisters of Charity of Halifax</b> 150 Bedford Highway Halifax NS B3M 3J5</p>	<p>Thomas Macdonald Blois Nickerson &amp; Bryson Barristers and Solicitors 1568 Hollis Street P.O. Box 2147 Halifax, NS B3J 3B7 (902) 425-6000 (phone) (902) 429-7347 (fax)</p>
<p>2. <b>The Roman Catholic Episcopal Corporation of Halifax</b> 151 Grafton Street Halifax NS B3J 2Y3</p>	<p>Hugh Wright McInnes Cooper 1601 Lower Water Street P.O. Box 730 Halifax, NS B3J 2V1 (902) 444-8616 (phone) (902) 425-6350 (fax)</p>
<p>3. <b>Les Soeurs De Notre Dame-Auxiliatrice</b> 895 Perreault Street East Rouyn-Norand QC J9X 5H5</p>	<p>Pierre-L. Baribeau Lavery de Billy 1 Place Ville-Marie Bureau 4000 Montreal QC H3B 4M4 (514) 877-2965 (phone) (514) 871-8977 (fax)</p>
<p>4. <b>Les Soeurs de St. Francois D'Assise</b> 2700 rue Lacordaire Montréal QC H1N 2M6</p>	<p>Pierre-L. Baribeau Lavery de Billy 1 Place Ville-Marie Bureau 4000 Montreal QC H3B 4M4 (514) 877-2965 (phone) (514) 871-8977 (fax)</p>
<p>5. <b>Insitut Des Soeurs Du Bon Conseil</b> 1381 Roy Street Normandin QC G8M 3V4</p>	<p>Pierre-L. Baribeau Lavery de Billy 1 Place Ville-Marie Bureau 4000 Montreal QC H3B 4M4 (514) 877-2965 (phone) (514) 871-8977 (fax)</p>
<p>6. <b>Les Soeurs de Saint-Joseph de Saint-Hyacinthe</b></p>	<p>Pierre-L. Baribeau</p>

Name and address of Catholic Entities	Address for Service
(The Sisters of St. Joseph of St. Hyacinthe) c/o Sister Marie-Clair Dupont, Superior General 805 av Raymond St. Hyacinthe Quebec J2S 5T9	Lavery de Billy 1 Place Ville-Marie Bureau 4000 Montreal QC H3B 4M4 (514) 877-2965 (phone) (514) 871-8977 (fax)
7. Les Soeurs De Jesus-Marie 10070 D'Auteuil Avenue Montréal QC H3L 2K1	Pierre-L. Baribeau Lavery de Billy 1 Place Ville-Marie Bureau 4000 Montreal QC H3B 4M4 (514) 877-2965 (phone) (514) 871-8977 (fax)
8. Les Sœurs de L'Assomption de la Sainte Verge 311 Saint-Jean-Baptiste Street Nicolet QC J3T 1H5	Pierre-L. Baribeau Lavery de Billy 1 Place Ville-Marie Bureau 4000 Montreal QC H3B 4M4 (514) 877-2965 (phone) (514) 871-8977 (fax)
9. Les Soeurs de l'Assomption de la Saint Vierge de l'Alberta 8533 90 Street Edmonton AB T6C 3L4	Pierre-L. Baribeau Lavery de Billy 1 Place Ville-Marie Bureau 4000 Montreal QC H3B 4M4 (514) 877-2965 (phone) (514) 871-8977 (fax)
10. Les Soeurs de la Charité de St.-Hyacinthe 16470 avenue Bourdages Sud Saint-Hyacinthe QC J2T 4J8	Pierre-L. Baribeau Lavery de Billy 1 Place Ville-Marie Bureau 4000 Montreal QC H3B 4M4 (514) 877-2965 (phone) (514) 871-8977 (fax)
11. Les Oeuvres Oblates de l'Ontario L'Edifice Deschatelets 175 Main Street Ottawa ON K1S 1C3	Pierre Champagne/Ron Caza Heenan Blaikie 55 Metcalfe St. Suite 300 Ottawa ON K1P 6L5 (613) 236-0596 (phone) (613) 236-9632 (fax)
12. Les Résidence Oblates du Québec	Pierre Champagne/Ron Caza

Name and address of Catholic Entities	Address for Service
<p>L'Edifice Deschatelets 175 Main Street Ottawa ON K1S 1C3</p>	<p>Heenan Blaikie 55 Metcalfe St. Suite 300 Ottawa ON K1P 6L5 (613) 236-0596 (phone) (613) 236-9632 (fax)</p>
<p>13. <b>La Corporation Episcopale Catholique Romaine de la Baie James (The Roman Catholic Episcopal Corporation of James Bay)</b> <b>The Catholic Diocese of Moosonee</b> Catholic Diocese of Moosonee Box 40 2 Bay Road Moosonee ON P0L 1Y0 (705) 336-2908 (phone) (705) 336-2759 (fax)</p>	<p>Pierre Champagne/Ron Caza Heenan Blaikie 55 Metcalfe St. Suite 300 Ottawa ON K1P 6L5 (613) 236-0596 (phone) (613) 236-9632 (fax)</p>
<p>14. <b>Soeurs Grises de Montréal/ Grey Nuns of Montreal</b> 138 rue Saint-Pierre Montreal QC H2Y 2L7</p>	<p>W. Roderick Donlevy/Michel Thibault McKercher McKercher &amp; Whitmore LLP 374 Third Avenue South Saskatoon SK S7K 1M5 (306) 653-2000 (phone) (306) 653-2669 (fax)</p>
<p>15. <b>Sisters of Charity (Grey Nuns) of Alberta</b> Grey Nuns Regional Centre 9810 - 165<sup>th</sup> Street Edmonton AB T5P 3S7 (780) 974-4799 (phone) (780) 484-7145 (fax)</p>	<p>W. Roderick Donlevy/Michel Thibault McKercher McKercher &amp; Whitmore LLP 374 Third Avenue South Saskatoon SK S7K 1M5 (306) 653-2000 (phone) (306) 653-2669 (fax)</p>
<p>16. <b>Les Soeurs de La Charité des T.N.O.</b> Grey Nun's Regional Centre 9810 - 165<sup>th</sup> Street Edmonton AB T5P 3S7 (780) 974-4799 (phone) (780) 484-7145 (fax)</p>	<p>W. Roderick Donlevy/Michel Thibault McKercher McKercher &amp; Whitmore LLP 374 Third Avenue South Saskatoon SK S7K 1M5 (306) 653-2000 (phone) (306) 653-2669 (fax)</p>
<p>17. <b>Hôtel-Dieu de Nicolet (HDN)</b></p>	<p>W. Roderick Donlevy/Michel Thibault McKercher McKercher &amp; Whitmore LLP 374 Third Avenue South Saskatoon SK S7K 1M5 (306) 653-2000 (phone) (306) 653-2669 (fax)</p>
<p>18. <b>The Grey Nuns of Manitoba Inc. -</b></p>	<p>W. Roderick Donlevy/Michel Thibault</p>

Name and address of Catholic Entities	Address for Service
<b>Les Soeurs Grises du Manitoba Inc.</b> Grey Nun's Regional Centre 9810 - 165 <sup>th</sup> Street Edmonton AB T5P 3S7 (780) 974-4799 (phone) (780) 484-7145 (fax)	McKercher McKercher & Whitmore LLP 374 Third Avenue South Saskatoon SK S7K 1M5 (306) 653-2000 (phone) (306) 653-2669 (fax)
19. <b>La Corporation Episcopale Catholique Romaine de la Baie d' Hudson The Roman Catholic Episcopal Corporation of Hudson's Bay</b> Box 10 Churchill MB R0B 0E0	Rheal Teffaine R. E. Teffaine Law Corporation 247 Provencher Blvd Winnipeg MB R2H OG6 (204) 925-1900 (phone) (204) 925-1907 (fax)
20. <b>Missionary Oblates - Grandin</b> 21 Meadowview Drive St. Albert AB T8N 1R9 (780) 459-2586 (phone) (780) 459-2797 (fax)	Curtis Onishenko McKercher McKercher & Whitmore LLP 374 Third Avenue South Saskatoon SK S7K 1M5 (306) 653-2000 (phone) (306) 653-2669 (fax)
21. <b>Les Oblats de Marie Immaculée du Manitoba</b> 474 rue Aulneau Piece St. Boniface MB R2H 2V2	Rheal Teffaine R. E. Teffaine Law Corporation 247 Provencher Blvd Winnipeg MB R2H OG6 (204) 925-1900 (phone) (204) 925-1907 (fax)
22. <b>The Archiepiscopal Corporation of Regina</b> 445 Broad Street North Regina SK S4R 2X8	James Ehmann, Q.C. Kanuka Thuringer LLP 1400-2500 Victoria Avenue Regina SK S4P 3X2 (306) 525-7200 (phone) (306) 359-0590 (fax)
23. <b>The Sisters of the Presentation</b> 1405 Mgr Pascal Place Prince Albert SK S6V 5J1	Mitchell Holash Harrandence Logue Holash Harlon Building P.O. Box 2080 1102 1 <sup>st</sup> Avenue West Prince Albert SK S6V 6V4 (306) 764-4244 (phone) (306) 764-4949 (fax)
24. <b>The Sisters of St. Joseph of Sault St. Marie</b> 2025 Main Street West	Charles Gibson

Name and address of Catholic Entities	Address for Service
North Bay ON P1B 2X6	Vincent Dagenais Gibson LLP 600-325 Dalhousie Street Ottawa ON K1N 7G2 (613) 241-2701 Ext 232 (phone) (613) 241-2599 (fax)
25. <b>Les Soeurs de la Charité d'Ottawa - Sisters of Charity of Ottawa</b> 9 rue Bruyere Ottawa ON K1N 5C9 (613) 241-2710 (phone) (613) 241-7139 (fax)	Pierre Champagne/Ron Caza Heenan Blaikie 55 Metcalfe St. Suite 300 Ottawa ON K1P 6L5 (613) 236-0596 (phone) (613) 236-9632 (fax)
26. <b>Oblates of Mary Immaculate - St. Peter's Province</b> 100 Main Street Ottawa ON K1S 1C2	William Sammon Barnes Sammon LLP 200 Elgin Street Suite 400 Ottawa ON K2P 1L5 (613) 594-8000 (phone) (613) 235-7578 (fax)
27. <b>The Sisters of Saint Ann</b> 1550 Begbie Street Victoria BC V8R 1K8	Patrick J. Delsey Law Corporation 1220 -1175 Douglas Street Victoria BC V8W 2E1 (250) 412-0531 (phone) (250) 412-0535 (fax)
28. <b>Sisters of Instruction of the Child Jesus</b> Sisters of the Child Jesus 318 Laval Street Coquitlam BC V3K 4W4	Violet Allard Sugden McFee & Roos 700-375 Water Street Vancouver BC V6B 5N3
29. <b>The Benedictine Sisters of Mt. Angel Oregon</b> 840 S. Main Street Mt. Angel OR 973262-9527 USA (503) 845-6141 (phone) (503) 845-6585 (fax)	Azool Jaffer-Jeraj Dohm Jaffer & Jeraj 202-1437 Kingsway Vancouver BC V5N 2R6 (604) 871-3550 (phone) (604) 871-3560 (fax)
30. <b>Les Peres Montfortains</b> Maison Provinciale des Montfortains 6455, avenue Louis-Riel Montreal QC H1M 1P1	Bernie Buettner Harper Grey LLP 3200 Vancouver Street 650 West Georgia Street Vancouver BC V6B 4P7 (604) 687-0411 (phone) (604) 669-9385 (fax)
31. <b>The Roman Catholic Bishop of Kamloops Corporation Sole</b> 635A Tranquille Road	John Hogg

Name and address of Catholic Entities	Address for Service
Kamloops BC V2B 3H5 (250) 376-3351 (phone)	Morelli Chertkow LLP Suite 300, 180 Seymour Street Kamloops BC V2C 2E3 (250) 374-3344 (phone) (250)374-1144 (fax)
32. <b>The Bishop of Victoria, Corporation Sole</b> The Roman Catholic Bishop of Victoria (name in most of the litigation) . 1 - 4044 Nelthorpe Street Victoria BC V8X 2A1	Frank D. Corbett Jawl and Bundon 4 <sup>th</sup> Floor, 1007 Fort Street Victoria BC V8V 3K5 (250) 385-5787 (phone) (250) 385-4354 (fax)
33. <b>The Roman Catholic Bishop of Nelson Corporation Sole</b> 402 West Richards Street Nelson BC V1L 3K3 (250) 354-4740	John Hogg Morelli Chertkow LLP Suite 300 180 Seymour Street Kamloops BC V2C 2E3 (250) 374-3344 (phone) (250) 374-1144 (fax)
34. <b>Order of the Oblates of Mary Immaculate in the Province of British Columbia</b> The OMI in B.C.; St. Paul's Province 1311 The Crescent Vancouver BC V6H 1T7 (604) 736-9363 (phone)	Fr. Terry McNamara OMI 1311 The Crescent Vancouver BC V6H 1T7 (604) 736-9363 (phone)
35. <b>The Sisters of Charity of Providence of Western Canada</b> Les Soeurs de Charite de la Providence des Territoires du Nord Ouest (predecessor) 3005 119 Street Edmonton AB T6J 5R5	Ray Baril, Q.C. Chomicki Baril Mah LLP 1201, 10088-102 Avenue Edmonton AB T5J 4K2 (780) 702-2317 (phone) (780) 420-1763 (fax)
36. <b>La Corporation Episcopale Catholique Romaine de Grouard</b> Box 388 210 1 <sup>st</sup> Street West McLennan AB T0H 2L0	Karen Trace McCuaig Desrochers LLP 2401 TD Tower 10088-102 Avenue Edmonton AB T5J 2Z1 (780) 426-4660 (phone) (780) 426-0982 (fax)
37. <b>Roman Catholic Episcopal Corporation of Keewatin</b> P.O. Box 270	James Ehmann, Q.C.

Name and address of Catholic Entities	Address for Service
The Pas MB R9A 1K4	Kanuka Thuringer LLP 1400-2500 Victoria Avenue Regina SK S4P 3X2 (306) 525-7200 (phone) (306) 359-0590 (fax)
38. <b>La Corporation Archiépiscope Catholique Romaine de St. Boniface</b> 151 Avenue de la Cathédrale Winnipeg MB R2H 0H6	Rheal Teffaine R. E. Teffaine Law Corporation 247 Provencher Blvd Winnipeg MB R2H OG6 (204) 925-1900 (phone) (204) 925-1907 (fax)
39. <b>Les Missionnaires Oblates de St. Boniface The Missionary Oblate Sisters of St. Boniface</b> 601 Aulneau St. Winnipeg MB R2H 2V5	Rheal Teffaine R. E. Teffaine Law Corporation 247 Provencher Blvd Winnipeg MB R2H OG6 (204) 925-1900 (phone) (204) 925-1907 (fax)
40. <b>Roman Catholic Archiepiscopal Corporation of Winnipeg</b> 1495 Pembina Highway Winnipeg MB R3T 2C6	Bill Emslie, Q.C. Aikins, MacAulay & Thorvaldson LLP 30 <sup>TH</sup> Floor – 360 Main Street Winnipeg MB R3C 4G1 (204) 957-4674 (phone) (204) 957-0840 (fax)
41. <b>La Corporation Episcopale Catholique Romaine De Prince Albert</b> 1415 4 <sup>th</sup> Avenue West Prince Albert SK S6V 5H1	Mitchell Holash Harrandence Loque Holash Harlon Building P.O. Box 2080 1102 1 <sup>st</sup> Avenue West Prince Albert SK S6V 6V4 (306) 764-4244 (phone) (306) 764-4949 (fax)
42. <b>The Roman Catholic Bishop of Thunder Bay</b> 1222 Reaume Street Thunder Bay ON P7B 1C4 P.O. Box 10400 Thunder Bay ON P7B 6T8	John Cyr Weiler Maloney Nelson 1001 William Street, Suite 201 Thunder Bay ON P7B 6M1 (807) 625-8880 (phone) (807) 623-4947 (fax)
43. <b>Immaculate Heart Community of Los Angeles CA</b> Sisters of the Most Holy Immaculate Heart	Mark Rowan



Name and address of Catholic Entities	Address for Service
of the Blessed Virgin Mary	Watson Goepel Maledy LLP 1700 – 1075 West Georgia Street Vancouver BC V6E 3C9 (604) 642-5656 (phone) (604) 683-8328 (fax)
44. <b>Archdiocese of Vancouver</b> <b>The Roman Catholic</b> <b>Archbishop of Vancouver</b> 150 Robson Street Vancouver BC V6B 2A7 (604) 683-0281(phone)	Mary Margaret MacKinnon Guild, Yule and Company LLP 20 <sup>th</sup> Flr, 595 Burrard Street PO Box 49170 Vancouver BC V7X 1R7 (604) 844-5537 (phone) (604) 688-1315 (fax)
45. <b>Roman Catholic Diocese of Whitehorse</b> The Catholic Episcopal Corporation of Whitehorse 406 Steele Street Whitehorse Yukon Y1A 2C8 (867) 667-2437 (867) 667-4713	Azool Jaffer-Jeraj Dohm Jaffer & Jeraj 202-1437 Kingsway Vancouver BC V5N 2R6 (604) 871-3550 (phone) (604) 871-3560 (fax)
46. <b>The Roman Catholic Episcopal Corporation</b> <b>of Mackenzie-Fort Smith</b> 5117-52 <sup>nd</sup> Street Yellowknife NT X1A 1T7	Karen Trace McCuaig Desrochers LLP 2401 TD Tower 10088-102 Avenue Edmonton AB T5J 2Z1 (780) 426-4660 (phone) (780) 426-0982 (fax)
47. <b>The Roman Catholic Episcopal</b> <b>Corporation of Prince Rupert</b> P.O. Box 7000 Prince George BC V2N 3Z2	Gary R. Brown Hope Heinrich Barristers and Solicitors 1598 6 <sup>th</sup> Avenue Prince George BC V2L 5G7 (250) 563-0681(phone) (250) 562-3761 (fax)
48. <b>OMI Lacombe Canada Inc.</b> Office of the Treasurers 151 Laurier Avenue East Ottawa ON K1N 6N8 (613) 230-2225 (phone) (613) 230 -2948 (fax) Timothy Coonen, OMI	David Stack McKercher McKercher & Whitmore LLP 374 Third Avenue South Saskatoon SK S7K 1M5 (306) 653-2000 (phone) (306) 653-2669 (fax)

Q.B. No. 816 of 2005

IN THE COURT OF QUEEN'S BENCH  
JUDICIAL CENTRE OF REGINA

BETWEEN:

LARRY PHILIP FONTAINE, et al

PLAINTIFFS

- and -

ATTORNEY GENERAL OF CANADA, et al

DEFENDANTS

**REQUEST FOR DIRECTIONS**

**A. PARTY REQUESTING DIRECTIONS**

This Request for Directions is brought by Corporation of Catholic Entities Party to the Indian Residential Schools Settlement ("CCEPIRSS") and the Catholic Entities.

**B. THE MATTERS IN ISSUE**

CCEPIRSS and the Catholic Entities seek the following relief:

1. a direction that all matters between CCEPIRSS and the Catholic Entities and the Attorney General of Canada ("Canada") (the "Parties") arising out of Schedule "O-3" to the Indian Residential School Settlement Agreement ("IRSSA") have been settled.

**C. THE RELIEF REQUESTED**

CCEPIRSS and the Catholic Entities request an order:

1. that upon payment of \$1,200,000.00 to Canada by the Catholic Entities through CCEPIRSS that all obligations of CCEPIRSS and the Catholic Entities pursuant to Schedule "O-3" have been satisfied and discharged including their obligations to:
  - (a) make a specified cash contribution;
  - (b) contribute to In-Kind Services;
  - (c) pursue a Canada-wide fundraising campaign which came to be known as Moving Forward Together.
2. that Canada provide to CCEPIRSS and the Catholic Entities a General Final Release in the form delivered to counsel for Canada under cover of an e-mail dated September 18, 2014.
3. that Canada pay costs on a solicitor-client basis.

**D. RESPONSE OF CANADA**

*To be received from Canada.*

**E. THE POSITION OF CCEPIRSS AND THE CATHOLIC ENTITIES**

1. Canada launched a Request for Directions (RFD) dated December 24, 2013. CCEPIRSS was the Respondent. The Catholic Entities were not named as respondents.
2. CCEPIRSS delivered a Response to Canada's Request for Directions dated January 27, 2014.

3. The issue in that Request for Directions related to the obligations of CCEPIRSS to make a specified cash contribution.
4. In support of its Request for Directions Canada filed an Affidavit of Pamela Stellick sworn February 12, 2014. The Affidavit deposed to the state of the In-Kind Services and Moving Forward Together.
5. With respect to Moving Forward Together paragraph 55 of the Affidavit says:

"As of today, there have been many problems in getting the Catholic Entities to fulfill their obligations under the IRSSA. CCEPIRSS has failed to pay the amounts owed to the AHF and to programs, they have failed to meet their \$25M fundraising obligation and they have failed to garner an adequate amount of investment income. The amount raised, which is reported to be about \$3M, is a fraction of what they had committed to in the IRSSA. The obligation to raise funds is subject to best efforts and thus Canada is not in a position to take enforcement measures."

6. Pamela Stellick was cross-examined on her Affidavit on May 7, 2014. Following is an excerpt from that cross-examination with respect to In-Kind Services:

12 Q You're government represented (sic) on several of the committees that have been established pursuant to the settlement agreement?

A Yes, there was the healing committees.

13 Q One of the committees I have got a reference to is the Catholic Hearing and Reconciliation Service Evaluation committee.

A And that's correct.

14 Q You are on that committee?

A I was, although that committee has ceased meeting for some time now. And having completed its \$25 million worth of In-Kind-Services, I --by the time I joined the department, I only went to the final two committee meetings before that was over.

15 Q All right. And before you there would be somebody else that represented the Federal Government?

A Yes.

16 Q What other entities comprised that committee?

A There were also representatives from the AFN on that committee, as well as representatives from the Catholic entities.

17 Q Was the purpose to ensure — of this committee — to assess and then ensure that the 25 million in-kind obligation of the Catholic entities in CCEPIRSS was met?

A The purpose was to approve submissions by — for consideration for — to be included in those In-Kind-Services in order to meet that obligation.

18 Q Out of the 25 million. Right?

A Yeah.

19 Q Is your understanding that—from the government's side of this thing—that it is satisfied that CCEPIRSS has discharged its obligation on the 25 million in-kind?

A Mm-hmm. I think — we now have a log from the committee listing all of the approved projects that were approved by in-kind.

20 Q Right.

A I was a little bit surprised to hear the 1.6 million in addition —

21 Q In cash?

A -- in cash, because I was certainly not aware of that, and I didn't see any of that in the log that was provided.

22 Q Right.

A So I am not aware of that as falling under the committee —

23 Q All right. But separate and apart from the 1.6 million, which was discussed this morning, is it the government's position that — had it been the government's position that the 25 million in-kind obligation had been met?

5

A I don't think there is an intention to dispute that.

24 Q All right. So for the purposes of what we are talking about, let's just park the in-kind obligation.

A For the In-Kind Services, which were not any financial donations, they were really just a sort of a subtractive process.

25 Q Yes. So is there any complaint presently extant on Canada's part about how the in-kind thing was handled?

A I don't think so now. I think initially -- from what I saw in the files -- there were discussions, and perhaps -- and some perhaps disagreement over what would be included.

26 Q Right

A From what I saw in the records, that that became resolved. And, at this point, I am not aware of any disputes or concerns.

7. By letter dated June 26, 2014 from Gordon J. Kuski, counsel for CCEPIRSS and the Catholic Entities, to Alexander Gay, counsel for Canada, an offer to settle all matters between the Parties (including the Catholic Entities who were not party to the RFD) was made. The entire letter is hereafter reproduced as it forms the main basis upon which CCEPIRSS and the Catholic Entities submit that a settlement has been struck and that they are entitled to the Release they are seeking.

June 26, 2014

**"WITHOUT PREJUDICE"**

**VIA E-MAIL: Alexander.Gay@justice.gc.ca**

Department of Justice Canada  
50 O'Connor Street, Suite 500  
Ottawa, Ontario  
K1A 0H8

**Attention: Alexander Gay**  
**Senior Counsel, Civil Litigation Section**



6

Dear Sir:

**RE: Corporation of Catholic Entities Party to the Indian Residential Schools Settlement (CCEPIRSS), the Catholic Entities, and Canada (the "Parties")**  
**Your File: 1360543**

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As a result of a meeting of the Board of Directors of CCEPIRSS and the Annual General Meeting of CCEPIRSS on June 22, 2014, I have been instructed to make the following offer to you in order to settle all matters between the parties:

1. The offer shall be regarded as private and confidential and will not be shared with anyone that is not necessary to the decision-making process;
2. CCEPIRSS will pay to Canada the sum of \$1 million;
3. Canada will provide to CCEPIRSS and the Catholic Entities a General Release with respect to all matters between the Parties, and more specifically, will provide a Release and an Indemnity in accordance with the terms contemplated by Section 4.5 and Section 4.6 of the Settlement Agreement, Schedule "O-3"; and
4. From the date of acceptance, CCEPIRSS and the Catholic Entities will require sixty (60) days in order to accumulate and pay the settlement monies, but will make every effort to pay the amount before the effluxion of sixty (60) days.

In order to avoid further efforts and costs, I request that you respond to this letter within 14 days of its date.

Yours very truly,  
McDOUGALL GAULEY LLP

GORDON J. KUSKI

GJK/jpf

8. A copy of the letter is attached at Tab A. The letter specifically says that the offer was made to settle "all matters" between the parties. It spoke of requiring a General Release.

No reference was made to the RFD. The letter requested a response within fourteen (14) days in order to avoid further efforts and costs.

9. No response to the offer to settle was made by Canada until September 16, 2014 when the parties finally entered into negotiations. Canada indicated that it would accept \$1,400,000.00 to settle. There was no mention by Canada concerning the terms of the offer to settle (i.e. the Release) as set out in the letter of June 26, 2014.
10. CCEPIRSS and the Catholic Entities countered with \$1,100,000.00.
11. Canada countered with \$1,300,000.00.
12. CCEPIRSS and the Catholic Entities then countered with \$1,200,000.00.
13. At the time of settling for \$1.2 Million, Canada did not question the terms of settlement as specified in the letter of June 26, 2014.
14. The \$1.2 Million was accepted by Canada by way of an e-mail dated September 18, 2014. The e-mail said:

"The client accepts \$1.2 M as a quantum.

The thing that needs to be resolved is the paperwork and the wording on the Release documents. How do you propose to proceed on that front?"

There was no indication that the terms of the June 26, 2014 letter raised any difficulty.

15. By e-mail in reply dated September 18, from counsel for CCEPIRSS and the Catholic Entities to counsel for Canada the e-mail said:

"Thanks for this. We have a deal.

I'll call you today to discuss logistics."



16. Later in the morning counsel for CCEPIRSS and the Catholic Entities sent a letter dated September 18, 2014 to counsel for Canada confirming the settlement following the terms of the June 26, 2014 letter. A copy of the letter is attached at Tab B.
17. By e-mail dated September 18, counsel for Canada responded saying:
- "I received your letter of today's date.
- For the moment, we have agreement on quantum. We have no agreement on the terms of the settlement. I have not seen the paper that you propose. Paras. 4.5 and 4.6 of Schedule O-3 say what they say and the Catholic Entities benefit from these terms, regardless of what is said in the eventual Release. I am not sure that we need to re-state what has been agreed to in the Settlement Agreement. In any event, I am sure that we will be able to discuss and get this thing finalized. I am open to suggestions."
18. After receipt of that e-mail counsel for CCEPIRSS and the Catholic Entities contacted counsel for Canada in order to discuss the matter. Counsel for Canada indicated that there was a different payee for the settlement funds and he would inform counsel of who the payee should be.
19. By e-mail dated September 18, 2014, counsel for Canada indicated to counsel for CCEPIRSS and the Catholic Entities:
- "The successor company is the: Legacy of Hope Foundation."
20. By e-mail dated September 18, counsel forwarded a draft form of General Final Release to counsel for Canada. The e-mail said:
- "Please see attached draft General Final Release.
- Please let me have your comments. As I indicated to you in our telephone conversation, I have not shared this with anyone else so it is entirely possible there will be some suggested changes coming from our side.
- Hopefully this will help us get to where we want to go".

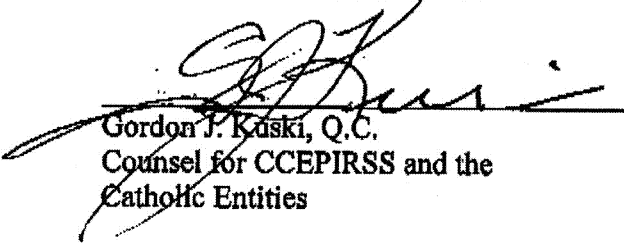
A copy of the draft General Final Release is attached at Tab C.

21. By e-mail dated September 24, counsel for CCEPIRSS and the Catholic Entities said:  
"Please advise where you are at with respect to the Release".
22. By e-mail that same day counsel for Canada advised:  
"Went to client. Last I heard they were fine, but needed another level of approval. Another day is likely all I need. I did make a few edits as well."
23. Counsel for CCEPIRSSs and the Catholic Entities replied by e-mail:  
"But please remember my clients have not seen my draft and they may have some comments."
24. By e-mail, counsel for Canada replied:  
"Understood".
25. By e-mail dated September 30, counsel for Canada said:  
"Sorry for the delay. I have made a few changes to the document. I know that you need to present it to your client as well. I will need to also put it to the ADNN, but I am reasonably certain that it will be approved as is."
26. Included with that e-mail was the draft Release with several changes having been made which changed the substance of the settlement. A copy of that draft General Final Release is attached at Tab D.
27. Counsel for CCEPIRSS and the Catholic Entities sent a letter to counsel for Canada dated October 1, 2014 indicating its position with respect to the matter. A copy of that letter is attached at Tab E.
28. By letter dated November 10, 2014, counsel for Canada indicated that as far as he was concerned there was no reason for expanding the release beyond what was at issue. A copy of the letter is attached at Tab F.

10

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18<sup>th</sup> DAY OF NOVEMBER,  
2014.

McDOUGALL GAULEY LLP

  
Gordon J. Kaski, Q.C.  
Counsel for CCEPIRSS and the  
Catholic Entities

TO: Alexander Gay  
Department of Justice Canada  
50 O'Connor Street, Suite 500  
Ottawa, Ontario  
K1A 0H8

AND TO: Catherine Coughlan, Secretary (NAC)  
Department of Justice  
300 EPCOR Tower  
10423 - 101 Street  
Edmonton, Alberta  
T5H 0E7

Tel: 780-495-2975  
Fax: 780-495-2964

AND TO: Brian Gover, Court Counsel  
Stockwoods LLP  
TD North Tower  
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Toronto, ON  
M5K 1H1

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This Document was delivered by:  
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1500-1881 Scarth Street  
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Lawyer in charge of file: Gordon J. Kuski, Q.C.  
Telephone: (306) 565-5111  
Facsimile: (306) 359-0785

565073\_2

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Court File No.: Q.B.G. No. 816 of 2005

**COURT OF QUEEN'S BENCH FOR SASKATCHEWAN**

Judicial Centre: Regina

***BETWEEN:***

**Larry Philip Fontaine in his personal capacity and in his capacity as the Executor of the estate of Agnes Mary Fontaine, deceased, Michelline Ammaq, Percy Archie, Charles Baxter Sr., Elijah Baxter, Evelyn Baxter, Donald Belcourt, Nora Bernard, John Bosum, Janet Brewster, Rhonda Buffalo, Ernestine Caibaiosai-Gidmark, Michael Carpan, Brenda Cyr, Deanna Cyr, Malcolm Dawson, Ann Dene, Benny Doctor, Lucy Doctor, James Fontaine in his personal capacity and in his capacity as the Executor of the Estate of Agnes Mary Fontaine, deceased, Vincent Bradley Fontaine, Dana Eva Marie Francey, Peggy Good, Fred Kelly, Rosemarie Kuptana, Elizabeth Kusiak, Theresa Larocque, Jane McCullum, Cornelius McComber, Veronica Marten, Stanley Thomas Nepetaypo, Flora Northwest, Norman Pauchey, Camble Quatell, Alvin Barney Saulteaux, Christine Semple, Dennis Smokeyday, Kenneth Sparvier, Edward Tapiatic, Helen Winderman and Adrian Yellowknee**

**Plaintiffs,**

**and**

**The Attorney General of Canada, The Presbyterian Church in Canada, The General Synod of The Anglican Church of Canada, The United Church of Canada, The Board of Home Missions of the United Church of Canada, The Women's Missionary Society of the Presbyterian Church, The Baptist Church in Canada, Board of Home Missions and Social Services of the Presbyterian Church in Bay, The Canada Impact North Ministries of the Company for the Propagation of the Gospel in New England (also known as The New England Company), The Diocese of Saskatchewan, The Diocese of the Synod of Cariboo, The Foreign Mission of the Presbyterian Church in Canada, The Incorporated Synod of the Diocese of Huron, The Methodist Church of Canada, The Missionary Society of The Anglican Church of Canada, The Missionary Society of the Methodist Church of Canada (also known as the Methodist Missionary Society of Canada), The Incorporated Synod of the Diocese of Algoma, The Synod of the Anglican Church of the Diocese of Quebec, The Synod of the Diocese of Athabasca, The Synod of the Diocese of Brandon, The Anglican Synod of the Diocese of British Columbia, The Synod of the Diocese of Calgary, The Synod of the Diocese of Keewatin, The Synod of the Diocese of Qu'appelle, The Synod of the Diocese of New Westminster, The Synod of the Diocese of Yukon, The Trustee Board of the Presbyterian Church in Canada, The Board of Home Missions and Social Service of the Presbyterian Church of Canada, The**

Women's Missionary Society of the United Church of Canada, Sisters of Charity, a Body Corporate also known as Sisters of Charity of St. Vincent de Paul, Halifax, also known as Sisters of Charity Halifax, Roman Catholic Episcopal Corporation of Halifax, Les Soeurs de Notre Dame-Auxiliatrice, Les Soeurs de St. Francois D'Assise, Institut des Soeurs du bon Conseil, Les Soeurs de Saint-Joseph de Saint-Hyacinthe, Les Soeurs de Jesus-Marie, Les Soeurs de L'Assomption de la Sainte Vierge, Les Soeurs de L'Assomption de la Saint Vierge de L'Alberta, les Soeurs de la Charite de St.-Hyacinthe, Les Oeuvres Oblates de L'Ontario, Les Residences Oblates du Quebec, La Corporation Episcopale Catholique Romaine de la Baie James (The Roman Catholic Episcopal Corporation of James Bay), The Catholic Diocese of Moosonee, Soeurs Grises de Montréal/GreyNuns of Montreal, Sisters of Charity (Grey Nuns) of Alberta, Les Soeurs de la Charité des T.N.O., Hotel-Dieu de Nicolet, The Grey Nuns of Manitoba Inc.-Les Soeurs Grises du Manitoba Inc., La Corporation Episcopale Catholique Romaine de la Baie D'Hudson - The Roman Catholic Episcopal Corporation of Hudson's Bay, Missionary Oblates - Grandin Province, Les Oblats de Marie Immaculee du Manitoba, The Archiepiscopal Corporation of Regina, The Sisters of the Presentation, The Sisters of St. Joseph of Sault St. Marie, Sisters of Charity of Ottawa, Oblates of Mary Immaculate-St. Peter's Province, The Sisters of Saint Ann, Sisters of Instruction of the Child Jesus, The Benedictine Sisters of Mt. Angel Oregon, Les Peres Montfortains, The Roman Catholic Bishop of Kamloops Corporation Sole, The Bishop of Victoria, Corporation Sole, The Roman Catholic Bishop of Nelson, Corporation Sole, Order Of the Oblates of Mary Immaculate in The Province of British Columbia, The Sisters of Charity of Providence of Western Canada, La Corporation Episcopale Catholique Romaine de Grouard, Roman Catholic Episcopal Corporation of Keewatin, La Corporation Archiépiscope Catholique Romaine de St. Boniface, Les Missionnaires Oblates Sisters de St. Boniface-the Missionary Oblates Sisters of St. Boniface, Roman Catholic Archiepiscopal Corporation of Winnipeg, La Corporation Episcopale Catholique Romaine de Prince Albert, The Roman Catholic Bishop of Thunder Bay, Immaculate Heart Community of Los Angeles CA, Archdiocese of Vancouver - The Roman Catholic Archbishop of Vancouver, Roman Catholic Diocese of Whitehorse, The Catholic Episcopale Corporation of MacKenzie-Fort Smith, The Roman Catholic Episcopal Corporation of Prince Rupert, Episcopal Corporation of Saskatoon, Omi Lacombe Canada Inc. and Mt. Angel Abbey Inc.,

**Defendants**

### **REQUEST FOR DIRECTIONS**

#### **A. PARTY REQUESTING DIRECTIONS**

1. This request for advice and direction is being brought by the Attorney General of Canada ("Canada").

## B. THE MATTER IN ISSUE

2. Catholic Entities are parties to the Indian Residential Schools Settlement Agreement ("Settlement Agreement") which was implemented on September 19, 2007. Pursuant to Schedule "0-3" of the Settlement Agreement, the Catholic Entities have agreed to the following obligations for healing and reconciliation purposes: (1) issue payments in the amount of \$29 million in cash; (2) provide In-Kind Services for a value of \$25 million; and (3) use best efforts to raise \$25 million through a Canada-Wide fund raising campaign.
3. In order to fulfill their obligations, the Catholic Entities established a not for profit corporation, namely the Corporation of Catholic Entities Party to the Indian Residential School Settlement agreement ("CCEPIRSS"), for the exclusive purpose of implementing and carrying out their financial and In-Kind Services obligations that they had pledged in support of the settlement. The CCEPIRSS is the legal vehicle that was used to bring together the various catholic entities that did not have a centralized organization. Canada and other religious denominations also had financial and In-Kind obligations under other Schedules of the Settlement Agreement.
4. Under section 3.12.1 of Schedule "0-3" of the Settlement Agreement, the CCEPIRSS is permitted to deduct "reasonable administration costs" from the capital amount held by the Corporation if: (a) the interest amount generated from the funds held by the Corporation on an annual basis is insufficient to cover the said expenses; and (b) Canada consents in writing to the reasonableness of these administration costs.
5. As of October 17, 2011, CCEPIRSS sought to deduct \$2,000,000 in administration costs, which include legal fees, from the amounts that were destined to be paid to the Aboriginal Healing Foundation ("AHF") or to other admissible programs and services, thereby reducing their overall financial contribution from the Net Amount of \$20,655,425 to \$18,655,425.

6. The legal fees claimed by CCEPIRSS have been charged by the same law firm that provided legal services directly to the Catholic Entities during the negotiations and implementation of the Settlement Agreement, namely the Montreal based law firm of Lavery.

### **C. ISSUES FOR WHICH DIRECTION IS SOUGHT**

7. Canada seeks this Honourable Court's guidance through judicial interpretation of the express terms set out in the Settlement Agreement on questions relating to the administration costs claimed by the CCEPIRSS.
8. The issues for which guidance is sought from this Court are as follows:
  - a) Whether the legal fees incurred by CCEPIRSS to administer the financial obligations of the Catholic Entities under the Settlement Agreement may be deducted as "reasonable administration costs" in circumstances where it was expressly agreed that Canada would not directly reimburse the Catholic Entities for such expenses;
  - b) Whether the legal fees claimed by CCEPIRSS are "reasonable administration costs" pursuant to sections 3.12 and 3.12.1 of Schedule "0-3" of the Settlement Agreement;
  - c) Whether "reasonable administration costs" incurred by CCEPIRSS are deducted after the minimum 80% of the Net Amount is transferred from CCEPIRSS to the Aboriginal Healing Foundation ("AHF");
  - d) Whether Canada's consent is required before the CCEPIRSS can pay the amounts claimed as reasonable administration costs; and



- e) Whether amounts deducted as administration costs without Canada's consent must be reimbursed by the Catholic Entities, the CCEPIRSS, or the Board of Directors.

#### D. CANADA'S POSITION

- 9. Canada refuses to consent to the deduction of the legal fees claimed by the CCEPIRSS. The Catholic Entities, through the CCEPIRSS, are claiming amounts that would otherwise be denied to them individually. The amounts are also disproportionately high and are not reasonable.
- 10. Through creative legal interpretation, the CCEPIRSS is attempting to divert monies away from the AHF, and former students of Indian Residential Schools, the intended beneficiaries of the funds owed by the CCEPIRSS.
- 11. Further, Section 5 of Schedule C of Schedule "0-3" of the Settlement Agreement provides that at least 80% of monies paid under Section 3.3 of the Settlement Agreement must be transferred to the AHF. The reasonable administration costs are to be deducted from the remainder of the funds only.
- 12. The CCEPIRSS seeks to deduct administration costs, including legal fees, from every dollar that is paid into the Corporation, and pay 80% of what remains to the AHF. The accounting approach adopted by the CCEPIRSS is inconsistent with the clear language and intent of the Settlement Agreement which requires *inter alia* that at least 80% from all monies paid into the Corporation be transferred to the AHF. The net effect of this accounting approach is to reduce the overall amounts that are paid to the AHF, and to give preference to the Corporation's administration costs, including their lawyers' fees, at the expense of former students of Indian Residential Schools.
- 13. The CCEPIRSS' approach is inconsistent and in infringement with the spirit, intention, and specific sections of the Settlement Agreement. Therefore, Canada is of the view that

the CCEPIRSS cannot deduct legal fees from their administration costs, and Canada further refuses to consent to such deduction.

**E. CCEPIRSS' POSITION**

14. The CCEPIRSS has been given an opportunity to insert its position into this document.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24<sup>th</sup> DAY OF DECEMBER 2013.**

**Alexander M. Gay**  
Counsel for the Attorney General of  
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**To:**

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Tel: 604-685-1229  
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**To:**

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Department of Justice  
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SECRET - RIA4770

**OFFER TO SETTLE FROM THE CORPORATION OF CATHOLIC ENTITIES PARTY  
TO THE INDIAN RESIDENTIAL SCHOOLS SETTLEMENT**

Decision by the Minister

DATE: August 7, 2014

**SUMMARY**

- In December 2013, Canada filed a Request for Direction to resolve issues about the financial obligations of the Corporation of Catholic Entities Party to the Indian Residential Schools Settlement to the Aboriginal Healing Foundation.
- Mediation in May 2014 (Annex B) was unsuccessful. A hearing was set for June 2014, but was postponed to October 9-10, 2014, as requested by the Corporation.
- On June 26, 2014, the Corporation made an offer of \$1 million, which represents a significant increase over previous offers. The Foundation agreed to \$1 million or more, and your office was to consult with the Assembly of First Nations. The Corporation is aware that the offer will not be accepted, as per your direction.
- Based on changing circumstances,

**RECOMMENDATION**

Deputy Minister/

Associate Deputy Minister: *Stéphane Poulin*Date: *11 August 2014*

I concur.



I do not concur



I wish to discuss further

Minister: *Scott Brison**Sept 12  
2014*

**SECRET – RIA4770****BACKGROUND**

- On December 24, 2013, Canada filed a Request for Direction to resolve issues about financial obligations of the Corporation of Catholic Entities Party to the Indian Residential Schools Settlement to the Aboriginal Healing Foundation.
- It is Canada's position that the Corporation of Catholic Entities still [REDACTED] to the Aboriginal Healing Foundation (Annex A), as per obligations outlined in the Settlement Agreement. The Corporation disagrees.
- Mediation took place in May 2014, and Canada held the position that it would not accept less than the full amount. A resolution was not reached during mediation and a hearing was scheduled for June 2014, in front of Justice Gabrielson, Court of Queen's Bench, Saskatoon.
- As requested by the Corporation of Catholic Entities, the Judge adjourned the hearing until October 9-10, 2014, meaning that the case will be heard following the closure of the Aboriginal Healing Foundation on September 30, 2014.
- A letter from the Corporation of Catholic Entities was sent to you on June 26, 2014, presenting an offer of \$1 million to settle the case.
- At that time, the Aboriginal Healing Foundation was consulted. It indicated that a settlement of \$1 million or more would be acceptable. Departmental officials were told that the your office would consult with the Assembly of First Nations to determine whether or not they would be comfortable with a settlement of anything less than the [REDACTED]

**CONSIDERATIONS**

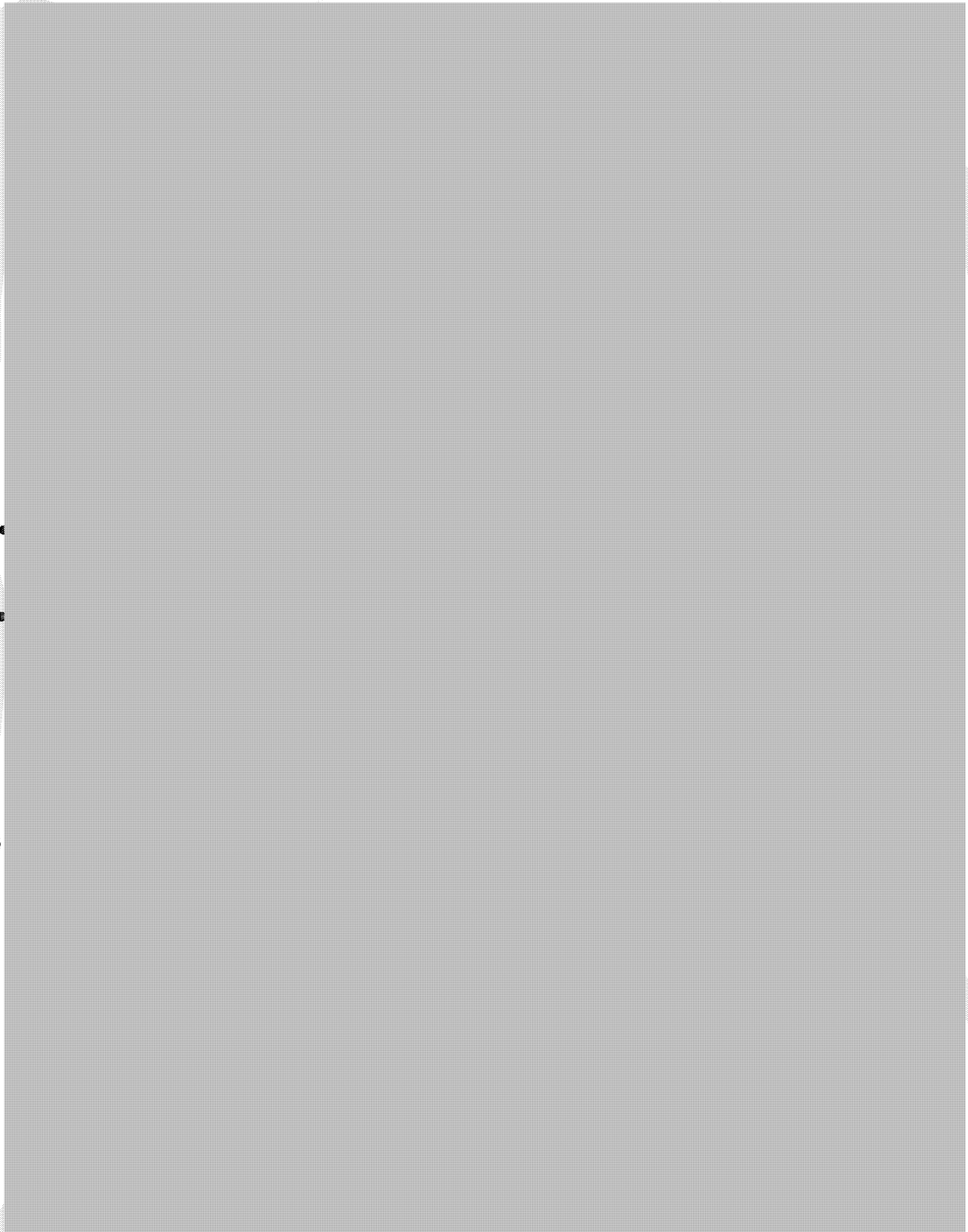
s.20(1)(c)

s.21(1)(a)

s.21(1)(b)

s.23

**SECRET – RIA4770**



## **COMMUNICATIONS CONSIDERATIONS**

### **NEXT STEPS**

### **MP/RIDING**

National

### **ANNEXES**

- Annex A: Catholic Entities' obligation to the Aboriginal Healing Foundation and other projects  
Annex B: May 23, 2014 Decision Note for the Minister  
Annex C: Media Lines

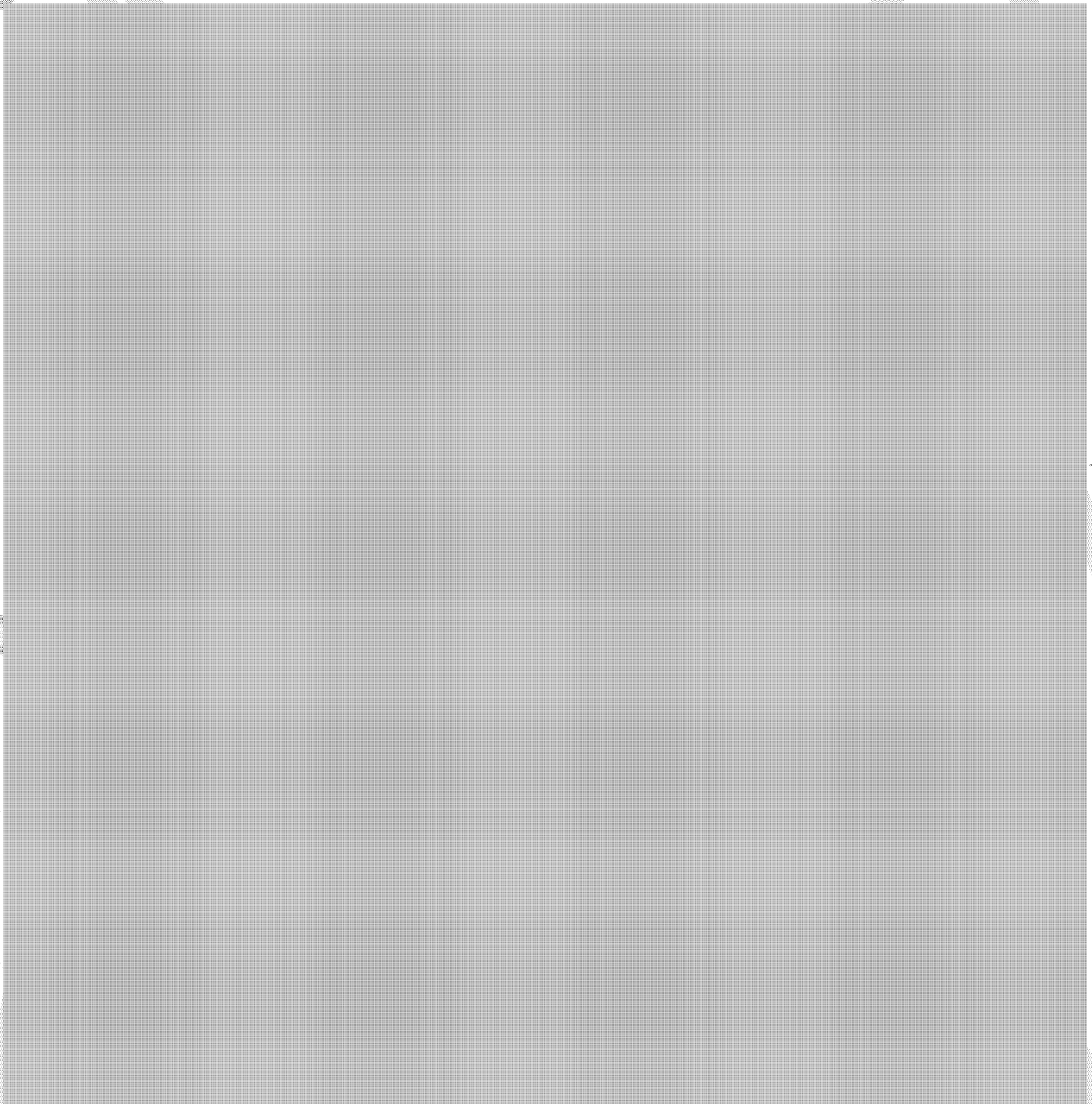


s.20(1)(c)

s.21(1)(b)

**SECRET – RIA4770**

**Annex A:  
Catholic Entities' obligation to the Aboriginal Healing Foundation and other  
projects**

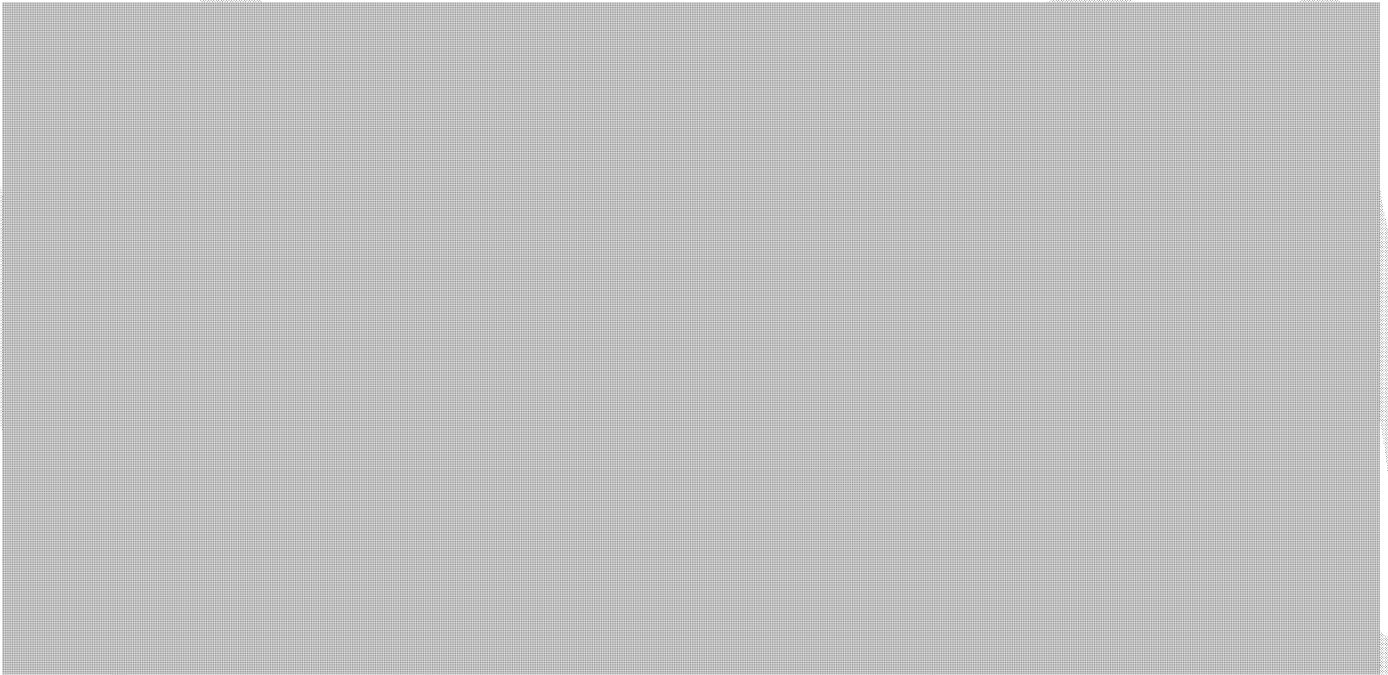




s.21(1)(a)

Annex

to RIA 4770  
JW.



s.20(1)(c)  
s.21(1)(a)  
s.21(1)(b)  
s.23

PROTECTED B – RIA5003

**CORPORATION OF CATHOLIC ENTITIES PARTY TO THE INDIAN RESIDENTIAL  
SCHOOLS SETTLEMENT - RELEASE**

Decision by the Minister

DATE: November 5, 2014

**SUMMARY**

- Canada brought a Request for Direction to compel the Corporation of Catholic Entities Party to the Indian Residential Schools Settlement to pay [REDACTED] being the outstanding amount owing to the Aboriginal Healing Foundation.
- On September 17, 2014, the Parties agreed to an amount of \$1.2 million to discharge this obligation.
- At issue is the scope of the release being sought by the Entities.
- The Entities claim that the settlement was intended to release them from any and all remaining obligations under Schedule O-3 of the Indian Residential Schools Settlement Agreement. The Entities' desired release goes beyond the scope of the Request for Direction.
- [REDACTED]
- Of the remaining obligations, there is a question about whether the Entities have made "best efforts" to raise a further \$25 million through a charitable campaign.

**RECOMMENDATION**

• [REDACTED]

Deputy Minister/

Associate Deputy Minister: \_\_\_\_\_ Date: \_\_\_\_\_

☐ I concur

☐ I do not concur

☐ I wish to discuss further

Minister: \_\_\_\_\_ Date: \_\_\_\_\_

PROTECTED B – RIA5003

## BACKGROUND

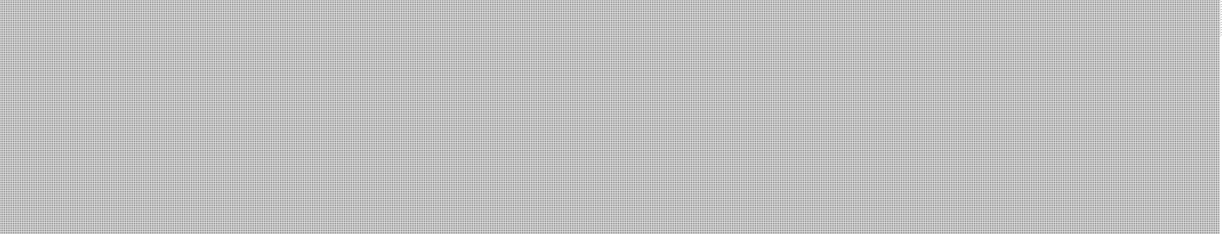
- Schedule O-3 of the Indian Residential Schools Settlement Agreement is the agreement between Canada and the Corporation of Catholic Entities Parties to the Indian Residential Schools Settlement Agreement concerning their specific obligations. Articles 3.19 and 5.7 of Schedule O-3 provide that Canada may bring a Request for Direction to compel the Entities to comply with their obligations under the Agreement.
- The Catholic Entities have three major financial obligations under the Settlement Agreement:
  - In-kind contributions amounting to \$25 million;
  - Best efforts to raise \$25 million by way of a charitable campaign until September 19, 2014, which is seven years from the Implementation Date of the Settlement Agreement; and
  - Approximately \$20.7 million to support healing and reconciliation. Of this amount, approximately \$16.5 million was to be paid to the Aboriginal Healing Foundation.
- On December 24, 2013, Canada brought a Request for Direction concerning an outstanding amount of [REDACTED] owing to the Aboriginal Healing Foundation.
- On September 17, 2014, further to your direction, Canada and the Entities came to substantial agreement concerning the amount that the Entities must pay in order to discharge their obligation to the Aboriginal Healing Foundation. It was agreed that they must pay \$1.2 million.
- The Entities are currently asserting that this agreement includes a release of any and all obligations that the Entities have under Schedule O-3 to the Settlement Agreement, including the best efforts charitable campaign and the in-kind services.
- [REDACTED]
- The Entities have issued a letter to Canada (Annex B), threatening to seek an order requiring Canada to honour the \$1.2 million settlement and provide a release of all obligations under Schedule O-3 to the Settlement Agreement.

## CONSIDERATIONS

[REDACTED]

**PROTECTED B – RIA5003**

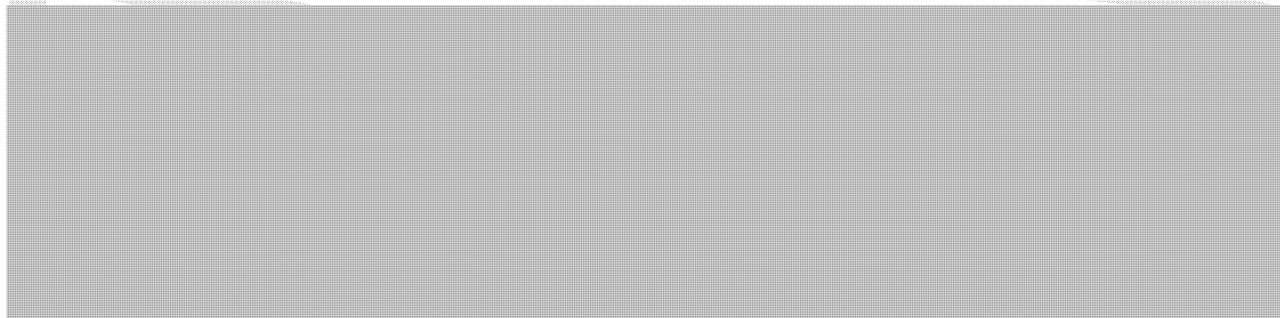
## **COMMUNICATIONS CONSIDERATIONS**

- Media attention on the Indian Residential Schools Settlement Agreement peaks as developments with regard to the Settlement Agreement become public. Media attention is expected once Canada files this motion for release.
- 
- As the Aboriginal Healing Foundation closed on September 30, 2014, the funds, which were to have been provided to the Aboriginal Healing Foundation, will be provided to the Legacy of Hope Foundation.

**PROTECTED B – RIA5003**

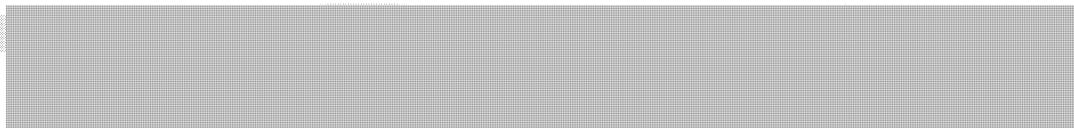
- Media lines will be updated and the public environment and media coverage will continue to be monitored.

**NEXT STEPS**



**ANNEXES**

Annex A:



Annex B: Letter from the Corporation of Catholic Entities Party to the Indian Residential School Settlement Agreement counsel to Justice Canada counsel, dated October 29, 2014

**Pages 180 to / à 186  
are withheld pursuant to sections  
sont retenues en vertu des articles**

**21(1)(b), 23, 21(1)(a)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

s.21(1)(a)

s.21(1)(b)

s.23

**From:** Duaine Simms  
**Sent:** 11/3/2014 11:22:24 AM  
**To:** Seetal.Sunga@aadnc-aadnc.gc.ca  
**CC:** Nathan.Benson@aadnc-aadnc.gc.ca; Alexander.Gay@justice.gc.ca  
**BCC:**  
**Subject:** CCEPIRSS - Release - Follow-up to Discussion 31 October 2014

Seetal:

Please let us know if you have further questions.

Duaine

Duaine W. Simms  
Senior Counsel / Avocat-conseil  
Department of Justice Canada / Ministère de la Justice Canada  
AANDC Legal Services / Services juridiques d'AADNC  
Aboriginal Children's Issues / Questions liées aux enfants autochtones  
90 Sparks Street, 5th floor / 90, rue Sparks, 5e étage  
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E-mail / Courriel : Duaine.Simms@aadnc-aadnc.gc.ca

Annex  
"B"



Government of Canada / Gouvernement du Canada

You can reply in the official language of your choice. | Vous pouvez me répondre dans la langue officielle de votre choix.

*Think of the trees before printing me please ~ Pensez aux arbres avant de m'imprimer s'il vous plaît*

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comments.docx>>**

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